

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Anglo-Newfoundland Development Company v. The Newfoundland Pine and Pulp Company, from the Supreme Court of Newfoundland (Privy Council Appeal No. 14 of 1913); delivered the 30th July 1913.

PRESENT AT THE HEARING:

LORD ATKINSON.

LORD SHAW.

LORD MOULTON.

[DELIVERED BY LORD MOULTON.]

In this case the Respondents, the Newfoundland Pine and Pulp Co., Ltd. (which may be conveniently styled the Pulp Co.), are suing the Appellants, the Anglo-Newfoundland Development Co., Ltd. (which may be conveniently styled the Development Co.), for the value of timber belonging to the Pulp Co. which it is alleged the Development Co. cut and carried away and disposed of to its own use. The case was heard in the first instance before Mr. Justice Johnston, who found in favour of the Pulp Co. for the sum of \$6,040 in respect of timber which had admittedly been wrongfully cut and appropriated by the Development Co., but he disallowed the claim in respect of certain other timber which he held that the Development Co. were entitled to cut and appropriate under a certain reservation clause of a sub-license which will be more particularly dealt with later on. On appeal to the full Court his Judgment upon the latter point was reversed and the damages were accordingly

increased to \$15,536.68. It is against this variation of the Judgment of Mr. Justice Johnston that the present Appeal is brought. The figures at which the damages have been assessed are not in dispute. The sole question is as to the right to recover these damages at all.

The relevant facts are not in dispute. On June 30th, 1906, certain licenses were granted by the Government to the Pulp Co., entitling them to cut timber over an area mainly situated within the watershed of the Exploits River in Newfoundland. By an Indenture, dated April 26th, 1907, the Pulp Co. assigned these licenses, with certain reservations, to the Albert E. Reed and Co. (Newfoundland), Ltd. (which may be conveniently styled the Reed Co.), and by an agreement of the same date the Reed Co. as holders of these licenses granted certain sub-licenses to the Pulp Co. These sub-licenses were separate documents, each one applying only to the lands included in one of the original licenses from the Crown. Finally, by an agreement of the third day of June 1909, the Reed Co. assigned to the Development Co. their rights under the licenses held by them and the sub-licenses granted by them so far as the same related to a certain portion of the area comprised in the fourteen original licenses.

It will be seen, therefore, that the rights of the Pulp Co. depend solely upon their being the holders of the sub-licenses above referred to, and it is, therefore, upon the true construction of those sub-licenses that the rights asserted by them in this action must depend. These sub-licenses are in one and the same form, differing only in the tract of land to which they severally apply, the one given in the Record being that corresponding in area to the original license numbered 106.

This sub-license is an agreement under seal between the Reed Co. and the Pulp Co. In the enumeration of the parties it is stated that the Reed Co. are thereafter called the "Licensors" and the Pulp Co. the "Licensees." It then recites that the Licensors are the holders of the Crown license for the lands and goes on to assign those lands to the Pulp Co.—

to have and to hold the said tract, piece, or parcel of land exclusively (except as hereinafter reserved) unto the Licensees and their assigns for the purpose of cutting for lumber and the products of same all pine, hardwood, juniper, and other timber whatsoever thereon (except spruce and fir) for the full end and term of 99 years from the 14th day of December 1903, and for the purpose of cutting for lumber and the products of same all spruce and fir having a diameter of 10 inches and upwards measured at a point 12 feet at least above the ground for the full end and term of 15 years from the date hereof.

Then there follows a reservation, upon the true construction of which the rights of the parties in this action depend—

preserving nevertheless unto the Licensors their assigns and nominees the said tract piece, or parcel of land for the purpose of cutting spruce and fir having a diameter of less than 10 inches measured at a point 12 feet at least above the ground, and for the purpose of cutting such timber as the Licensors may require in connection with the establishment and maintenance of pulp and paper mills and of any buildings or erections for dwelling

or other purposes, and of any dams, roads, bridges or other works in connection with the foregoing or any of them, but not for the purpose of sale or export.

The Appellants contend that the words "their assigns or nominees" ought to be read into this reservation before the words "may require," so that the right to take lumber (as contrasted with pulp wood) will extend to all that "the Licensors their assigns or nominees may require" for the purposes set out in the latter words of the clause. Unless this be so the Judgment appealed from must stand, because it was the Development Co. that cut the lumber for their own purposes and they were not the "Licensors."

It is of course possible in certain cases to read in the word assigns when not expressed in the document, though their Lordships know of no case in which the words "assigns or nominees" have been thus supplied. But whether or not it is proper so to do must depend on the context in each case. In the present instance the reservation, even if it be restricted to the requirements of the Licensors themselves, is so wide and expressed in such vague terms as to raise doubts as to its enforceability. There is no restriction as to the situation of the mills or buildings or of the provenance of the wood to be worked upon in the mills, nor do the surrounding circumstances enable the Court, consistently with the rules of construction of documents, to introduce the necessary limitations. Each of the licenses is a separate document not referring in any way to the existence of the other licenses. It is admitted by the Appellants themselves that it would be ridiculous to treat the reservation as covering only lumber

required for mills to work the pulp wood obtained from the area covered by the license or to restrict the roads to roads used only for the purpose of bringing to mill the pulp wood from that area. The pulp and paper mills erected in this business are intended to deal with the pulp wood of very much larger areas, and in fact with that from whole watersheds. If, therefore, it were possible for the Licensors, having satisfied their own needs for the specified purposes, to assign the sub-license to some other company or to nominate some other person to exercise their rights thereunder, it would be possible to subject the lumber rights of the Respondents to a series of fresh demands which might eventually destroy the value of their lumber rights under such of the sub-licenses as cover areas from which such lumber could conveniently be obtained. Indeed, it is hardly too much to say that to extend the word Licensors beyond the meaning expressly given to it in the sub-license itself, and to extend it to the assigns and the nominees of the Licensors, would, in the present instance, destroy the only effective limitation on the scope of the reservation, and make it possible for the Licensors very seriously to derogate from their grant in the case of some of these sub-licenses (each of which must be treated as a separate document), because there is no contractual provision against their passing from time to time into different hands nor even any practical reason why they should not do so.

For these reasons their Lordships are of opinion that the reservation must be construed as covering only the personal requirements of the Licensors, and that, therefore, the Judgment appealed from was right. They will, therefore, humbly advise His Majesty that this Appeal should be dismissed, and that the Appellants should pay the costs thereof.

In the Privy Council.

THE ANGLO-NEWFOUNDLAND
DEVELOPMENT COMPANY

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THE NEWFOUNDLAND PINE AND
PULP COMPANY.

DELIVERED BY LORD MOLLTON.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1913.
