

1918

*May 8, 9.

*May 13.

RUTTER v. ORDE.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

Timber licences — Application — Description — Sufficiency of — “Forest Act”, B.C.S. [1912] c. 17, s. 17.

APPEAL from the judgment of the Court of Appeal for British Columbia (1), affirming, on an equal division of the court, the judgment of the trial judge, Clement J. and maintaining the respondent's (plaintiff's) action.

The question in issue turns upon the construction of section 17 of the “Forest Act” of British Columbia. The representative of the appellant was the first locator of certain timber claims; and having found on a tree the words “Clyde River,” he made his application for a timber license on that river. Later on, the respondent staked the same timber limits, calling the same river as “Swede River,” the name under which it was known in the locality. The provincial authorities dealt with these applications as covering different localities. The licence applied for by the respondent was first issued, and later on the one in favour of the appellant was issued.

The trial judge held that the respondent's licence, being first issued, vested in him all rights of property in the timber limits against any claim of the appellant.

On appeal to the Supreme Court, the judgment of the Court of Appeal, affirming on equal division the judgment of the trial Court, was affirmed.

Appeal dismissed with costs.

O. C. Bass for the appellant.

A. H. Macneill K.C. and *R. M. MacDonald* for the respondent.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Anglin and Brodeur JJ.