

1919

*Mar. 19.

*Apr. 9.

MALONE v. HIS MAJESTY THE KING.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

*Expropriation—Public lands—Provincial grants—Right of way—Timber
—License—Compensation.*

APPEAL from the judgment of the Exchequer Court of Canada (1), maintaining the appellant's (suppliant's) action.

The appellant, by his petition of right, seeks to recover the sum of \$40,080 and, at the conclusion of the evidence, reduced his claim to \$29,466, as representing the value of timber alleged to have been cut by the respondent's officers and servants while engaged in the construction of the National Transcontinental Railway. In 1907, the Quebec Government granted to the commissioners of this railway the Crown land they required for their right of way, and later on the Crown Lands Department of that province sold to the appellant the timber limits which comprised this right of way. The appellant took action against the respondent for the value of the trees cut by it for the construction of the railway on the right of way and on each side of it.

The Exchequer Court disallowed any claim as to the trees on the right of way and awarded \$1,000 for the trees cut outside of it.

The Supreme Court of Canada, after argument, reserved judgment and eventually affirmed this judgment.

Appeal dismissed with costs.

St. Laurent K.C. for the appellant.

Lafleur K.C. for the respondent.

*PRESENT:—Sir Louis Davies C.J. and Idington, Anglin, Brodeur and Mignault JJ.