

reference to tamarac poles in it is in a postscript or memorandum in the writing of an officer of the company, and it has relation only to the price to be paid for the same. I do not find that the company and Hailstone were working strictly in accordance with this memorandum. The company kept such control of the work and of the mode of carrying it on, that I find Hailstone not to be a contractor, but servant. There is also some evidence of ratification on the part of officers of the company after it was discovered that a trespass had been committed. I do not find that the position of trees cut on the Killbear block differs from that of those on lot 61. The company were responsible for what their co-defendant did and for what was done by people intrusted with the execution of the work by him. These defendants being then co-trespassers and tort-feasors, have not, in my opinion, succeeded in their internecine struggle to cast the burden the one upon the other, and they are both severally liable to the plaintiff.

I come now to consider the question of damages. I refuse utterly to treat this trespass as so innocent a one as to entitle the defendants to say that they are to pay simply the board measure value of the wood which they have undertaken to cut and haul off the plaintiff's property. I find that there was gross negligence on the part of the defendants in not ascertaining and keeping within the true boundaries of the lots over which they had the right to cut. The key-note of the situation is, no doubt, to be found in the expression repeated over and over in the evidence, that private owners or locatees or grantees were to protect their own lots. For example, see p. 168 of the evidence of defendant Hailstone, line 5: "Q. So that your instructions from the company were to cut everything you dare and let the other people protect their own lots? A. I was to use judgment and care and caution, I admit that, in cutting up to the line, but if there was any doubt I was to let them protect their own lots,"—phrase pregnant with sinister meaning!

There is very little question about the number of the pieces. I exclude the road allowances, as the defendants apparently had the right to cut there. I find there were 180 tamarac trees removed from lot 61, from which I deduct 83 as cut by the plaintiff himself, leaving 97. I find there were 91 cut on Killbear; total 188. I deduct 54 cut on defendant company's lot by leave of Carson, leaving 134 to be