

reason of the injunction the defendant would sustain damage he would hold plaintiffs responsible.

The evidence satisfies me that the defendant did not intend to take, or use or injure any part of the plaintiffs' land. There was no question of removing plaintiffs' fence further than was necessary to enable defendant to work to the line.

The defendant did speak of claiming the land to the post mentioned by Wilson, and did speak of the projecting eave, or cornice, of the stable, but apart from a suggestion as to his right he had done nothing up to the time of issuing the writ beyond what seemed reasonable under the circumstances.

The acts complained of, even if done, were not likely to do any irreparable damage to the plaintiffs. If the defendant had actually commenced to build any part of his wall upon plaintiffs' lands he would have done so at his own risk and loss, and would be obliged to pay damages, if any, to plaintiffs, and money in payment of damages would be adequate remedy. Then the matter was in fact comparatively trifling to the plaintiffs.

An injunction might be calculated to do the defendant great damage and if it did not in fact injure it cannot be held to excuse the plaintiffs. This seems to me a case where from first to last there was no intention to injure the plaintiffs, and had the plaintiffs attempted in a reasonable way to meet the defendant a settlement of all of the small matters in dispute could have been arrived at. My inference from the evidence is that the defendant did not at first intend to claim or encroach upon any land in possession of plaintiffs. After relations had become strained, the defendant apparently thought that if his conveyance called for it, and if the surveyor was right in giving him an extra few inches he would take it, but he did not intend to fight for it, nor did he in fact take it, and has not in this action claimed it. The plaintiffs point to defendant's examination for discovery as shewing his real intention before injunction order issued. Defendant's answers upon that examination go no further than to challenge or doubt plaintiffs' paper title to as much land as they had in possession. The defendant did not set up any claim beyond what I have above stated.