

I have, however, gone over it with care, and my judgment is against the plaintiff Thomas Cardwell and in favour of the defendant upon what was done and its effect.

The plaintiffs are entitled to some damages. It is hard to say just how much of the damage has been caused by the defendant's action and how much would have naturally flowed from the wetness of the seasons.

Having regard to the circumstances in each case, the weather records, the time specified during which it is said damage occurred, including any detriment to the trees—and the want of any exact data of the real damage—I fix the damages of Thomas Cardwell at one hundred dollars, of Benjamin Cardwell at fifty dollars, of Fitzpatrick at seventy-five dollars, and of Garvey at seventy-five dollars.

In addition to damages, the plaintiffs are entitled to an injunction to restrain the defendant, after the cessation of the spring freshets or after the 15th of May, whichever shall be the latest, and until the autumn freshets begin or until the 1st November, whichever shall be the latest, from maintaining the water by his dam so as to overflow the embankment mentioned in his deed; except that in the case of the plaintiff T. Cardwell the injunction shall not extend so as to protect him from flooding occasioned by any cuts or openings beyond the north end of the embankment mentioned in the evidence.

The defendant had the right to stop the old ditch where it entered his land, and is entitled, under his conveyance from Read, to enter on and repair the embankment, and may, if he desires it, have it so declared, especially with reference to the cut or opening known on plan Exhibit 12 as "B."

As to the costs. While the plaintiffs succeed in their claim for an injunction and damages, they fail upon a most important part of their claim, namely, the assertion that the dam had been raised; and they have not proved their damages as set out before the trial. While, therefore, they are entitled to the general costs of the action other than those relating to the taking of Lobb's evidence and the application therefor, I think there must be deducted from these costs one-half of the counsel fees taxed against the defendants for the trial.

Thirty days' stay.