

the opinion which I gave, it would give *Fuller* the 1854.
 possessory right, although not expressed in the original
 agreement in writing, and such is my legal opinion." Fuller
v.
Richmond.
 And again: "My answer in regard to *Craig's* ques-
 tion as to the effect of marking the logs was made to
Craig, but it was given for the benefit of all, and in
 the presence of all the parties concerned; and I
 consider that the marking of the logs was understood
 by *Richmond* and *Carl* to give to Mr. *Fuller* a certain
 right—an indefinite right—over the logs." What this
 witness means by the term "possessory right" is not
 very apparent. Perhaps he meant that the property
 would vest in *Fuller*, subject to the defendants' right
 to retain till payment. There is a passage in the
 re-examination which would seem to import that. He
 says, "I cannot say that *Carl* and *Richmond* consid-
 ered that the possessory right I said the marking of
 the timber would give to *Fuller* would entitle *Fuller*
 to go and take possession in the event of a breach of
 the contract."

Judgment.

Carl, one of the defendants, has been examined as
 a witness on behalf of *Richmond*. Upon what prin-
 ciple that was done I do not understand, for, looking
 at the last order drawn up upon the injunction motion,
 by consent of parties, *Carl* and *Richmond's* interest
 in the suit is clearly admitted and provided for. Still
 he has been cross-examined, and the objection has
 been, I suppose, waived (*a*). Now, *Carl's* account of
 the matter is this: "*James Craig* spoke about security,
 and Mr. *Robertson* said he thought, according to the
 writings or instructions *Craig* had from the plaintiff,
 security could not be taken. *Craig* said he did not
 know that it would make any particular difference.
Craig said he wanted a heavier hammer, with "J. W.
 F." upon it. I did not care, I said, what mark was
 upon the logs so long as I could tell my own logs from
 the others in the river. *Craig* said he did not care

(a) *Tristan v. Hardey*, 14 Beav. 24.