

then are defendants entitled? As the McNaughton and Stallwood & Gunn timber was never in fact brought down at all, the same measure obviously cannot be applied as in the case of the other logs. It does not appear to me that defendants are entitled to any more than nominal damages. The loss of the timber by fire is the only damage defendants have suffered. If plaintiffs are not liable to make that good, there cannot be any question of substantial damages at all. This result may appear unfortunate in view of plaintiffs' breach of contract, but it is, I think, inevitable.

As arranged on the argument, I will hear counsel further as to the quantity of timber left behind by plaintiffs and brought down by defendants the following year, and as to the cost to defendants of bringing it down.

Argument was afterwards heard as to the amount of damages and on the question of costs.

THE LOCAL MASTER:—After hearing further argument, I find that 6,500 logs were left behind in 1904 on the Jean Baptiste and the Blanche, by plaintiffs, and brought down the following year by defendants. This is exclusive of the McNaughton and the Stallwood & Gunn dumps destroyed by fire, the quantities in which, as only nominal damages can be recovered in respect of them, it is unnecessary to find. The total number of logs brought down by defendants in 1905, including those in question, was 31,667, and the total cost of bringing them down was \$1,000. If defendants are entitled to a proportionate part of this sum as the cost of bringing down the 6,500 logs, the amount will be \$291.37. Plaintiffs, however, point out that defendants would have brought down the other logs in any event, and contend that the cost of doing so could not have been materially increased by the addition of 6,500. It is of course, my duty, in assessing the damages, to endeavour to place defendants in the position they would have been in had the contract not been broken, but in no better position; and if it clearly appeared that the logs were brought down without expense, nothing would be allowable under this head. In the absence, however, of clear evidence of this, I cannot aid the wrongdoer by assuming it to have been so. It is definitely proved that defendants brought down 31,667 logs, at a total cost of \$1,000. The only course open to me appears to be to attri-