

The plaintiff commenced his operations, and had begun or was about to begin to cut on two of the lots, when, about the 18th December, 1918, in consequence of a letter received by the defendants from the Crown timber agent, the defendants' woods-manager notified the plaintiff that cutting on these lots must not be proceeded with. The plaintiff went on with other work; but, soon after the 6th February, 1919, in consequence of further communications from the Crown timber agent, pointing out that on a number of lots the defendants had no right to cut, the defendants' agent told the plaintiff to stop cutting on those lots; and the plaintiff caused his workmen and sub-contractors to cease work.

There was, of course, an implied contract on the part of the defendants that the plaintiff should be left in undisturbed possession of all the lots mentioned in the written contract: Halsbury's Laws of England, vol. 3, p. 198; and, upon being told to stop work on the lots mentioned, the plaintiff was entitled to refuse to proceed further with his contract and to bring an action for damages. He did not do that, but wrote a letter to the defendants, telling them that, while he could not be expected to get out 7,500 cords, he was going on to get out all that could be got from the lots on which the defendants were entitled to cut. It was his right to proceed in that way, if he saw fit to do so, and to retain his claim for damages for being prevented from operating on the lots on which the defendants had no rights: *Roberts v. Bury Commissioners* (1870), L.R. 5 C.P. 310, 320. There was nothing to shew that this right had been waived.

Therefore from the 10th February onwards, the plaintiff was bound to cut what wood there was on the lots on which cutting was permissible, and was liable in damages if he failed to do so; and the defendants were liable in damages for preventing him from cutting on the lots on which cutting was not permitted.

The plaintiff did not cut on all the lots on which cutting was permissible; and the result was that the damages to which the plaintiff was entitled on account of the prevention of performance, and also the damages to which the defendants were entitled for the plaintiff's failure to complete, must be assessed.

After close consideration of the evidence, the learned Judge assessed the plaintiff's damages at \$4,000.

Upon the counterclaim, the learned Judge found that the plaintiff had failed to cut 1,075 cords; and said that the evidence did not warrant him in going further in the attempt to assess the damages suffered by the defendants. The defendants should be allowed to take a reference to the Local Master to assess such damages as they may have sustained by reason of the failure of