

ROSE, J., in a written judgment, said that there was no doubt that the trespass was committed; the difficulty was in the ascertainment of the quantity of wood taken, and in fixing the price per cord that ought to be paid by the defendants.

As to the quantity of wood there was a great divergence between the opinions of the witnesses, the estimates ranging from between 500 and 600 cords down to 130 cords or less; but the learned Judge accepted the estimate made by Mr. Flook, a land surveyor, that not more than 130 cords were taken.

As to the damages: there was nothing to justify a finding that over and above the value of the trees taken there was any serious injury to the mining location or any material diminution in the selling value of the trees still standing; and the only question was as to the amount to be paid for the 130 cords.

The trespass was not wilful—there was no intention of cutting and stealing the plaintiffs' trees; but there was, apparently, no difficulty in locating the boundaries of the plaintiffs' property, and there was negligence in trespassing. Moreover, some of the wood was cut and taken away after the defendants had been warned by their contractor that it was probable that the cutting was being done upon the plaintiffs' location. In these circumstances, it could not be well argued that the value of the wood on the stump was the limit of the defendants' liability; and the question must be as between its value cut and piled on the mining location, and its value on the shore of Lake Superior, where it was when the plaintiffs, having learned of the trespass, claimed it. The value should be placed at \$10 a cord at the water's edge, and \$6 a cord piled on the plaintiffs' mining location. If there was a doubt as to the real value, the defendants, who were wrongdoers, ought not to have the benefit of it.

When the plaintiffs discovered that the pulpwood had been taken, they commenced replevin proceedings, and an order was made that, upon the defendants paying into Court \$5,500 or delivering to the plaintiffs an undertaking on the part of the company to which the defendants had sold the wood that the company would hold in its hands, to satisfy the plaintiffs' claim, \$5,500 out of the moneys payable by the company to the defendants, the defendants might remove the wood. Apparently the money was paid into Court or the undertaking was given. Then the statement of claim was delivered. In it the plaintiffs alleged the trespass and the carrying away of 500 cords of wood, asserted that the value of the wood, on the shore of Lake Superior, was \$5,500, and claimed that sum as "damages for the said pulpwood wrongfully cut and taken by the defendants," and also damages for the trespass. The defendants pleaded denying the trespass, and paid into Court \$1,430.