

## Province of Ontario.

## COURT OF APPEAL.

From Lount, J.]

[Nov. 24, 1902.

UNION BANK OF CANADA v. RIDEAU LUMBER CO.

*Trespass—Cutting and removing timber—Measure of damages—Wrongful and wilful acts.*

In trespass, the inquiry is, what damages will compensate or restore the plaintiff financially to his original position as nearly as possible at the time when the trespass was committed?

Where the defendants had wrongfully and wilfully entered upon and cut and carried away timber from the plaintiffs' limits, and the plaintiffs sued for trespass only:—

*Held*, that the damages should be measured by (1) the value of the timber after it was severed and manufactured, so far as it was manufactured, while on the timber limits of the plaintiffs, immediately before the defendants removed it; (2) such sum as represented the extent to which the limits were injured, if at all, by reason of their having been partly denuded by the acts of the defendants; (3) such further and other damages as resulted to the limits by the acts of the defendants, such, for instance, as wasteful methods in cutting, using the surface to pass and repass, etc.

*Martin v. Porter*, 5 M. & W. 351, and *Bull Coal Co. v. Osborne*, [1899] A.C. 351, applied and followed.

Judgment of LOUNT, J., affirmed.

*Douglas, K.C.*, and *Smellie*, for plaintiffs. *G. F. Henderson*, for defendants.

From Divisional Court.]

[Nov. 24, 1902.

MORRISON v. GRAND TRUNK RAILWAY CO.

*Evidence—Discovery—Examination before trial—Officer of company—Engine driver—Consolidated Rule 439.*

*Held*, reversing the decision in this case, 38 C.L.J. 379; 4 O.L.R. 43, that inasmuch as the engine driver never was in charge of the train, never assumed the duties of conductor, and never acted for the defendants in relation to the control, conduct and management of the train in such a way as to make him responsible to the defendants except for the management of his engine, he was not an officer of the company examinable for discovery under Consolidated Rule 439.

Speaking generally the officer of the corporation who, if there was no action, would be looked upon as the proper officer to act and speak on