

rights of the defendant Richards upon the road allowance, and much incensed at the destruction of the trees along the shore. On the return of this motion, the defendants were, by order, allowed to remove the timber cut, subject to the plaintiff's right to damages. The timber then cut was the plaintiff's, and the defendants must answer for its then value—not as standing timber, but as it then was in the log. *Faulkner v. Greer*, 16 O.L.R. 123, and *Greer v. Faulkner*, 40 S.C.R. 399, are conclusive upon this question.

The 44 trees would cut on the average 3 logs each; and, allowing 18 logs to the M., would give about 7,000 feet—probably an under-estimate, as some of the trees were very large. This at \$6.50 per thousand would make \$45. To this must be added two cords of tan bark, \$10; and, I think, an allowance should be made for the trespass and injury to the lands; this I fix at \$50; making a total of \$105.

Then as to costs. In *Cooper v. Whittingham*, 15 Ch.D. 501, Sir George Jessel says: "When a plaintiff comes to enforce a legal right, and there has been no misconduct on his part—no omission or neglect which would induce the Court to deprive him of his costs—the Court has no discretion and cannot take away the plaintiff's right to costs . . . The rule is plain and well settled. It is, for instance, no answer, when a plaintiff asserts a legal right, for a defendant to assert his ignorance of such right, and to say, 'If I had known of your right, I would not have infringed it.' There is an idea prevalent that a defendant can escape paying costs by saying, 'I never intended to do wrong.' That is no answer; for, as I have often said, some one must pay the costs, and I do not see who else but the defendants who do wrong are to pay them."

Here the defendants did not admit the wrong and submit to an injunction, as they well might have at an early stage, and so have avoided the prosecution of the action beyond the injunction motion.

Something is said, in a memorandum handed in by Mr. Jones, as to the defendant Zimmerman being a contractor, and so being alone liable. This is based on an answer made to a question asked late in the trial, and upon which there was no cross-examination. The defence admits the responsibility of both defendants for the cutting, and no such issue was suggested at the hearing.

Judgment will be for the plaintiff for the injunction sought and \$105 damages and the costs of the suit on the High Court scale, including the costs of the injunction motion.