

the now defendant was enabled to and did take these pieces of timber from Batson and Currier, and the damages Batson and Currier thereby sustained was the loss of these pieces of timber, the value of which, as assessed by the learned Judge, was \$3,543; and for this sum, less \$275 ²⁷/₁₀₀, the amount he found due upon the plea of set-off, I think the plaintiffs are entitled to a verdict.

I do not think that the grant made by the Crown to the defendant of these pieces of timber, made as it was after this action was commenced, could in any way affect the rights of the parties as they then existed, and it could not deprive the plaintiffs of the right to recover their damages above assessed against the defendant.

The Court has, however, always had the power, and has frequently exercised the right of staying proceedings upon replevin bonds upon such equitable terms as seemed just; and I think, as I have already said, that this a case in which that power and right ought to be exercised.

I think that if the defendant desires, and so elects within ten days, an account should be taken (unless the parties can agree as to the amount) of the cost to Batson & Currier of cutting, making, skidding, drawing, and transporting the said pieces of timber, that is, the whole cost of the said timber to them up to the time it was replevied, together with interest on such cost from the time it was incurred up to the time of payment hereinafter mentioned: that from the amount of such cost so found should be deducted the amounts pleaded by way of set-off, together with interest thereon; and that upon payment by the defendant of the balance found after such deduction, together with the costs of this suit, and of taking such account, immediately after the finding of such balance, all proceedings herein should be stayed.

I refer to *Patterson et al. v. Fuller*, 31 U. C. R. 323; *Mulvaney v. Hopkins*, 13 U. C. R. 174.

HAGARTY, C. J., and CAMERON, J., concurred.

Judgment accordingly.