

the reference in the counterclaim to the charges as set forth in the defence, and the further allegation that such charges were falsely and maliciously spoken by plaintiff, are quite sufficient to make the counterclaim in its present form a good pleading within Rule 268.

It is never necessary or even permissible to set out the evidence by which malice is to be established at the trial: see *Glossop v. Spindler*, 29 Sol. J. 556; *Odgers*, 3rd ed., p. 556.

Appeal allowed as regards counterclaim and dismissed as regards defence. If defendant desires to amend his defence, he should do so within 5 days. No costs of appeal or of order appealed from.

---

BOYD, C.

NOVEMBER 28TH, 1904.

TRIAL.

### HIXON v. REAVELY.

*Waste—Tenant for Life—Sale of Timber—Proceeds to be Used in Repairs—Injunction—Damages—Reference.*

Action by remaindermen against tenant for life for an injunction and damages in respect of alleged waste by cutting timber from the land and selling it. Trial at Welland.

BOYD, C.—All the niceties of the ancient learning as to waste which obtain in England are not to be transferred to a new and comparatively unsettled country like this province. It is, no doubt, laid down in the books that the tenant for life cannot cut down trees for repairs and sell the same, and that he must use the timber itself in making the repairs, and that the sale is waste: *Gower v. Eyre*, G. Cowp. 161. And this doctrine was reluctantly applied by Lord Thurlow in a case where the tenant felled the timber and applied the produce instead; but he called it a hard demand and refused to give costs: *Lee v. Alston*, 1 Ves. Jr. 78; S. C., 3 Bro. C. C. 37. This case, however, turned very much on the pleading, wherein defendant admitted wrongful cutting. So in *Summers v. Norton*, 7 Bing. and 5 M. & P. 660, the Court held that, in the absence of a proper plea, evidence could not be given that the tenant had applied for repairs other timber bought with proceeds of the timber cut, which was unsuit-