

of their claim, namely, the assertion that the dam had been raised; and they have not proved their damages as set out before the trial. While, therefore, they are entitled to the general costs of the action other than those relating to the taking of Lobb's evidence and the application therefor, I think that there must be deducted from these costs one-half of the counsel fees taxed against the defendants for the trial.

MIDDLETON, J.

MAY 15TH, 1913.

FIELD v. RICHARDS.

Trespass—Cutting Timber—Damages—Injunction—Costs.

Action for an injunction and damages in respect of trespass and cutting timber on the plaintiff's lands.

The action was tried before MIDDLETON, J., without a jury, at Bracebridge, on the 8th May, 1913.

R. C. Levesconte, for the plaintiff.

J. E. Jones, for the defendant.

MIDDLETON, J.:—The plaintiff owns lot 15 in the 12th concession of the township of McLean, intersected by a bay of Lake Menominee (often called Rat Lake). The lands are wooded, and were purchased for use as a summer residence. The patent reserves "an allowance of one chain in perpendicular width for a road on the shore." Warne, the patentee, purchased the timber on the road allowance from the Townships of McLean and Ridout; but, when he sold the land, he did not sell the timber on the road allowance. On the 12th July, 1909, Warne, for \$25, sold to Richards the timber on this allowance, with the proviso that all timber not removed by the 19th April, 1911, should revert to him. Richards also acquired title to the adjoining lands.

In the winter of 1909-1910, Richards and his co-defendant Zimmerman, acting for him, cut timber and trespassed on the plaintiff's lands. It is admitted that 21 trees were cut on the portion of the lot north of the bay, and it is shewn that 23 trees were cut on the lands south of the lake.

A discharged employee of one of the defendants gave an exaggerated account of the trespass, and a motion for an injunction was the result. The plaintiff was also ignorant of the