1954
November 12

GEORGE MILLIOTIS v. THE CYPRUS UMBER INDUSTRIAL CO. LTD. AND ANOTHER

[VASSILIADES, P.D.C., AND DERVISH, D.J.]
(November 12, 1954)

GEORGE MILLIOTIS OF LYSI, *Plaintiff*,

v.

1. THE CYPRUS UMBER INDUSTRIAL CO. LTD.,
2. UMBER CORPORATION OF LARNACA, LTD.

Jointly and/or severally Defendants.

(*District Court of Larnaca—Action No.* 797/51)

Land—Government licence to work minerals—Exploitation without consent of landowner—Measure of damages.

The second defendants who were the holders of a licence from the Government of Cyprus authorizing them to enter upon, work and export terra-umbra from five areas of land, including plaintiff's land (which was of the *arazi mirié* category prior to 1946), entered the latter's land without his consent, opened up an area of about 2 donums and excavated extensive ditches, wells and underground tunnels for the purpose of finding and obtaining umber. In fact, they found and removed 2,681 tons of marketable umber through the openings made in plaintiff's land but mostly from underneath the adjoining plot, thus causing damage to the plaintiff in the loss of the use of a considerable part of his land, and in the disregard and violation of his proprietary rights on the said land from 1950 to 1953.

On exhausting the umber deposits defendants ceased prospecting on plaintiff's land, and after action they filled up ditches and wells to level the surface; but the top soil of the levelled area required time for weathering before it became fit for cultivation, while underground there were still tunnels which in future might, perhaps, subside causing further inconvenience or damage to the plaintiff.

It was conceded by the plaintiff that terra-umbra found on his land was the property of the State.

Held: (1) That in view of the provisions of sub-section (3) of section 3 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231, it could no longer be said that the ownership of plaintiff's land belonged to the State nor that plaintiff's title was merely that of possessor for purposes of cultivation. Plaintiff was the owner of the land, and his ownership extended to the surface and to the substance of the earth beneath the surface, reasonably necessary for his enjoyment thereof, but did not extend to minerals which are the property of the State;

(2) that the provisions of the licence from the Government did not authorize the defendants to enter plaintiff's land without his consent;

(3) that defendant's acts on plaintiff's land amounted to a trespass;

(4) that the plaintiff was not entitled to damages measured on the value of the umber;

(5) that the measure of damages should be what would put the plaintiff as owner of the land as near as possible the position to which he would find himself before the trespass.

Stelios Pavlides, Q.C., with *L. Santamas* for plaintiff.

A. Demetriou for defendant No. 1.

J. Clerides, Q.C., with *D. Theocharis* for defendant No. 2.

Judgment was delivered by :

VASSILIADES, P.D.C. : The plaintiff in this action, is the registered owner of a plot of land, a field, of about 16 donums extent, in the area of the village of Arsos in this district. He bought the land at a public auction in 1936 for just over £13. (*Vide* title, exhibit 4).

The defendants are two private limited liability companies, both incorporated in Cyprus and carrying on business at Larnaca. They are both engaged in the terra-umbra business. The first defendants buy the umber in raw state, they subject it to certain process in their factory, and they sell it abroad, mostly in America. There are two more business firms in Larnaca who buy and export umber. These three umber exporting concerns formed in 1937, on the suggestion of the Inspector of Mines, a separate company to operate the umber quarries under one licence and to regulate the supply of raw umber to the three exporting firms according to their requirements. This supplying company are the second defendants in the action.

Umber or terra-umbra, according to the evidence in this case, is a brown earth found in the form of soft stone or dust, used as pigment, either in the raw state or calcined. Its colour is believed to be due to oxyde of manganese or iron, but it is not yet definitely known to what exactly the colour is due. (D.W. 1, p. 20).* It is found in Cyprus in two different areas as far as the evidence shows, a certain part of Larnaca district (the area of three neighbouring villages Arsos, Troulli and Avdellero, within which area plaintiff's land lies) (D.W. 2, p. 22) and near Skouriotissa mine in Nicosia district (P.W. 6, p. 15).* It lies on or near the surface in layers or underground veins, found at varying depths not far from the top soil; and if good enough for the market, it is quarried or dug out, carried to the surface by manual labour, and then carted or taken on lorries to the exporter who buys it at so much per ton delivered at his store.

Until 1937 these umber quarries were operated under licences issued by the Commissioner of the district to the exporter on application (D.W. 4, p. 33). It was not shown under what law or power these licences were issued. The owner of the land where marketable umber could be found or a quarry-man in conjunction with such owner, dug out

* In this judgment D. W.=Defendants' witness
P. W.=Plaintiff's witness.

the umber under such a licence and sold it to the carrier, a carter or lorry-driver at so much per ton. The carrier loaded it on his cart or lorry and carried it to the exporter who in his turn bought it from the carrier at the price agreed per ton delivered at his store. This price covered what the carrier had to pay the quarry-man for the umber, plus transport including the carrier's loading and unloading labour. The quarry-man's price covered the labour for digging including a small charge for the umber, one or two piastres per ton depending on the quality of the material (D.W. 4, at p. 33). The exporter's price which covered it all, was at that pre-war time about ten shillings per ton. There was also the middle-man who usually arranged the price between carrier-seller and exporter-buyer. He also arranged for a foreman who supervised the quarrying and saw that only the proper material was carried. The middle man's profit was a commission of about a shilling per ton, paid by the exporter; the foreman's work also paid by the exporter, was either wages or commission.

In due course the Inspector of Mines and Quarries stepped in to put the extraction of umber on a better footing. At his instance the three exporting firms in Larnaca formed between themselves their supplies company (the second defendants) in 1937. To this company the Governor now (and not the district Commissioner) issued for the first time a licence in formal style " to work deposits of terra-umbra ", in the manner prescribed in the licence for a period of 20 years, in five areas of land specified in the licence, containing 5.76 square miles; apparently the area in this district where the umber quarries existed or where new umber layers were likely to be found. This licence was produced at the trial and put in as exhibit 2. There is nothing in this document to indicate the law or authority under which it was granted. It provided for the conditions under which the quarries were to be operated; and it also provided for a rental payable to the Director of Land Registration and Surveys at the rate of five pounds per square mile annually (clause 5) and for the payment of a royalty to the Comptroller of Customs and Inland Revenue at the rate of 3½ shillings for each ton of terra-umbra exported (clause 7).

Acting under this licence, the second defendants (to whom for purposes of convenience we shall hereinafter refer as defendants) operated the quarries existing in that area and opened new quarries on much the same lines as before, excepting that openings were now more extensive as much more money could be spent on them, and underground work was probably better supervised. Defendants as licensees had to keep an employee responsible to the office of the Inspector of Mines for the condition and maintenance of the underground tunnels (D.W. 2, p. 26).

Same as before the existence of exhibit 2, the exporter desirous of buying umber, contacted the middle-man and informed him of his requirements. The middle-man approached the foreman and both of them looked for the quarry which could supply the required kind of umber. The middle-man acted for the defendants on a commission basis, a shilling per ton (D.W. 3); and the foreman was their servant, at the material time also paid at a commission basis at the rate of six piastres per ton (D.W. 2, p. 22).

If the existing quarries could not supply the required umber, these two men tried to locate a new layer or vein, by opening holes or wells where they thought that umber could be found. They usually employed the owner of the land for this purpose, if he happened to be a workman together with other labourers. Defendants paid the costs of this prospecting; and if the umber required was found in sufficient quantities, it was quarried and carted on much the same lines as before.

The price payable by the exporter for umber delivered at his store or factory at Larnaca, was arranged between carrier-seller and buyer through the middle-man. It depended on the distance, the kind of road connecting the village road with the quarry, how handy the material was or how difficult it was to dig out, the cost of labour, etc. The price covered the digging out labour, the small charge paid to the owner of the land, the loading on the lorry, the transport to the exporter and the unloading on delivery (D.W. 3, p. 27; D.W. 4, p. 33). The work was supervised by the foreman who was defendants' servant. They (defendants) moreover paid the middle-man's commission.

Clause 18 of defendants' licence (exhibit 2) provided that nothing contained in the licence gave the licensees "any rights over or in respect of any private property held under proper title" comprised in the areas of the licence or any authority to them, "their workmen, servants or agents to do or cause or permit to be done any act to the detriment of the rights of private persons or the property of private persons" contained in the said areas. There is evidence that defendants had a contract in writing with the owner of the land on which they worked a quarry in 1948/1949 (D.W. 2 at p. 26). And that the owner of another plot, adjoining that of the plaintiff used to watch the work done on his land, but defendants' foreman did not know what this man was paid for the use of his land (D.W. 2 at p. 25). It is common ground, however, that defendants contacted the plaintiff with the object of fixing the compensation to be paid to him for what they were doing on his property. But this was done after they had been working on his land for about two years (D.W. 4 at p. 32).

Plaintiff's land in that area, about 180 donums, including

plot 85, was in the possession of a tenant. Defendants' foreman started prospecting on plaintiff's plot 85, in 1948, with the object of finding layers of terra-umbra. He opened a well to a depth of about six yards, but found only traces of terra-umbra and filled up the well. Next year, 1949, defendants' foreman opened two or three such prospecting wells in the adjoining plot 86, the property of one Shefki Hassan (D.W. 2 at p. 23). In all these attempts to get at the terra-umbra, defendants' foreman found water about four yards below the surface and had to abandon these wells one after the other. Water, according to this witness (D.W. 2) is an impediment which stops further digging for umber. After these unsuccessful attempts on Shefki's land (plot 86) the foreman opened a well in plaintiff's land near the boundary of plot 86. He went a depth of about eight yards without finding water. But he did not find a satisfactory deposit of umber and filled up the well.

Next year, 1950 (presumably in the summer when the fields are empty and terra-umbra works are on the move) the same foreman, defendants' servant, tried Shefki's land again as he could see traces of old quarries there; he opened a trench now, about four yards deep and about four or five yards wide. He again found water and had to stop. "I then suggested to the defendants trying to locate the layer of terra-umbra in Shefki's land by an opening from plaintiff's land" this witness stated in evidence (D.W. 2 at p. 23). "In August, 1950, I opened a trench in plaintiff's land about seven yards deep and about 15 yards wide. From the bottom of the trench I sank a well to a depth of about three or four yards and from that well I opened a gallery (a tunnel) in the direction of Shefki's land in order to find the layers of terra-umbra which I thought would be found there" (D.W. 2 at p. 23 (*a*)).

At this stage plaintiff's tenant appeared and defendants' foreman suggested the payment of compensation at the rate of the land's proportionate rent for such time as defendants worked there, he said. Nothing was said as to payment of so much per ton and nothing was concluded on the foreman's proposal.

Defendants continued working there, digging their tunnel in a zig-zag direction from plaintiff's land towards their objective in Shefki's adjoining plot until they eventually struck the umber deposits. Terra-umbra was then extracted from the mouth in plaintiff's land and was taken to the exporters, in the way already described. The prospecting work for locating the umber deposits in question cost defendants, according to their witness Petrakides (D.W. 4) about £1,200. And again according to this witness and

his records, a total quantity of 2,681 tons of umber was extracted from that quarry during the summer of 1950 when it was opened, and the following summer, 1951, when it was exhausted (D.W. 4 at p. 31).

The evidence of defendants' witnesses is that about 2,500 tons of that umber came from underneath Shefki's land and only about 150 tons from the area underneath plaintiff's land. One witness (D.W. 4) put it precisely at 2,540 tons and 141 tons respectively. But we find ourselves unable to accept this evidence based on visual assessments in underground tunnels by persons interested in the case. The maximum we can go with the evidence on this point is to accept the figure for the umber actually supplied to the exporters and paid for, namely 2,681 tons, and to find that most of this has probably come from layers underneath the area of Shefki's land (plot 86). But the whole of it came out of the mouth of the quarry in plaintiff's land (plot 85).

During the second season 1951 defendants had been working the quarry in question plaintiff went to their office at Larnaca to settle the question of the compensation payable to him for the use defendants were making of his land. Defendants' employees offered plaintiff compensation at the rate of two pounds per donum of land used for each season, that is something in the neighbourhood of eight pounds in all. Defendants' witnesses stated that plaintiff left them with the impression that their offer was acceptable. But plaintiff denies this. In fact some time later, plaintiff consulted a lawyer in Nicosia, who filed this action with a claim of sixty thousand pounds. We find that nothing was concluded on that interview between plaintiff and defendants' employees. And in fairness to counsel who conducted plaintiff's case at the trial, we must add that they had nothing to do with the original claim on the writ, which right from the opening of the case they expressly stated that they could not adopt.

In April, 1953, a local inspection of the property was carried out by a land registry clerk (witness 1), in the presence of the parties or their representatives and plans were prepared showing plaintiff's plot 85, the opening made therein by defendants, and Shefki's adjoining plot 86. They did not show, however, the underground work. These plans are before the Court as exhibits 1 (*a*) and 1 (*b*).

Towards the end of the summer in the same year (1953) defendants again entered plaintiff's land without his knowledge or consent, this time to close up the opening and level the field. Plaintiff's counsel complained that this action on the part of the defendants destroyed evidence in the case

as it rendered inspection of the opening and tunnels impossible. Plaintiff could no longer show what tunnels still existed underneath his land or answer defendant's evidence as to what part of the umber extracted from that quarry came from plaintiff's land.

In the statement of claim plaintiff's case is put on the allegation that until the coming into operation of the present Immovable Property (Tenure, Registration and Valuation) Law, in September, 1946, plaintiff's land belonged to the category of *arazi mirié* and that at the material time it was neither a State forest nor hali-land or crown property. (Paras. 6 and 7). Defendants through their servants or agents, plaintiff alleges, unlawfully entered upon this land of his and unlawfully extracted and removed 20,000 tons of umber in 1948, 1949, 1950 and 1951 (paras. 9 and 12). This umber formed part of the substance of the earth of plaintiff's field, the statement of claim further alleges, and its removal caused plaintiff pecuniary damage (paragraph 13) in that:—

(*a*) Plaintiff was deprived of the chance of exploiting the umber himself with the prospect of making a profit of three pounds per ton; or

(*b*) Negotiating with defendants or other persons his permission to extract and remove the umber on the basis of a share of not less than 50% of the value of 20,000 tons at three pounds each.

And plaintiff's claim as put in para. 14 of his pleading is :—

(*a*) Damages on the above figures;

(*b*) £50.0.0 expenses for restoration of the land to its former state for productive cultivation; and

(*c*) An injunction restraining defendants from continuing the trespass or otherwise interfering with plaintiff's said land.

The two defendants put in separate defences. The first defendants denied liability mainly on the assertion that they never interfered with plaintiff's land as whatever was done therein was done by defendants 2 who had a valid licence to extract the terra-umbra from there which (terra-umbra) was not the property of the plaintiff. (Paras. 7, 9 and 10).

The second defendants also denied liability mainly on the allegation that they had a licence from the Government of Cyprus (exhibit 2) authorizing them "to enter upon, work and export terra-umbra from five areas of land..... 5.76

square miles . . . . ." including plaintiff's land (para. 4); that in 1948 they (defendants 2) without any objection from plaintiff's tenant merely dug experimentally some wells which they closed up; and that in 1950 again without objection from plaintiff's tenant, they (defendants 2) "opened a shaft and dug a well . . . . . for the purpose of bringing to the surface terra-umbra extracted through an addit leading to an adjoining land belonging to another person" (para 7). Defendants 2 further assert the rights derived from their licence (exhibit 2) and say that plaintiff had no rights over terra-umbra or minerals found in his land and that his only rights were to cultivate or lease for cultivation the said land and "if prevented from cultivating any part of it to be compensated by payment of double the produce". (Para. 9).

Defendants 2 moreover deny plaintiff's allegation about the extraction of 20,000 tons of umber admitting only that in 1951 they opened a shaft and underground addit under plaintiff's land out of which they extracted about 150 tons of umber (para. 10). This, however, defendants allege, is a mineral which does not belong to plaintiff but to Government.

As to compensation defendants allege that they offered plaintiff two pounds per year for each donum of land interfered with which plaintiff accepted. And as to the claim for levelling and for injunction, defendants say that they are ready to level and restore the field to its former condition, intending never to enter it again for umber. They offer once more to pay the eight pounds for 1950 and 1951.

We have already stated our findings as to the main facts which the pleadings put in issue. Defendants entered plaintiff's land without his knowledge or consent in 1948 and 1949 for prospecting purposes. In 1950 and 1951, again without plaintiff's consent, defendants opened up an area of about two donums of plaintiff's land and excavated extensive ditches, wells and underground tunnels for the purpose of finding and obtaining umber. In fact they found and removed at least 2,681 tons of marketable umber through the openings made in plaintiff's land, extracted partly from underneath plaintiff's plot but mostly from underneath the adjoining plot. This action on the part of the defendants caused plaintiff damage in the loss of the use of considerable part of his land (about two donums), and in the disregard and violation of his proprietary rights on the land in question for at least four years (1950-1953 inclusive). On the other hand defendants obtained substantial benefit from the work done on plaintiff's property.

On exhausting the umber deposits, defendants ceased

prospecting on plaintiff's land and after action they filled up ditches and wells to level the surface; but the top soil of the levelled area requires time for weathering before it becomes fit for cultivation, while underground there are still tunnels which in future may perhaps subside causing further inconvenience or damage to the owner of the land. The underground part of plaintiff's plot is not the same as before defendant's action. Defendants approached plaintiff long after they had been working on his field, and offered to pay compensation. The practice until 1937 was to compensate the owner of the land with the payment of a small fee, one or two piastres per ton, depending on the quality of material extracted. (D.W. 4 at p. 33). The fee payable to the owners of land in 1950 and 1951 was about six piastres per ton calculating the tonnage on the quantities delivered to the exporter (D.W. 4). To plaintiff defendants offered compensation at two pounds per donum per annum, viz. eight pounds in all. Plaintiff declined this offer and consulted a lawyer. Hence this action.

In their final addresses learned counsel on both sides dealt extensively with the development and present state of the law regarding minerals, their ownership, extraction, etc. We find it unnecessary, for the purposes of this judgment, to enter into the history of the law applicable to this case. Counsel for plaintiff conceded that terra-umbra found on plaintiff's land is the property of the State and not that of his client. We cannot go behind this concession in order to decide whether terra-umbra is or is not a mineral under the law. But plaintiff could stop defendants from entering and using his land in the way they did for the extraction of terra-umbra, counsel contended. Prior to 1953 there was no power in the Government or any other authority to compel a private owner to give up his land for that purpose, he argued.

Counsel for the defendants on the other hand, contended that terra-umbra is a mineral within the definition in section 4 (2) of the Immovable Property (Tenure, Registration and Valuation) Law, and section 2 of the Mines and Quarries (Regulation) Law, 1953 (or the definition in the statutes which this law substituted) and submitted that as a mineral, terra-umbra belonged to the State wherever found, on the surface or underground. Plaintiff's title to the land in question, counsel argued, is merely that of a holder for purposes of cultivation. Clause 18 of defendants' licence (exhibit 2), he submitted, must be read in that light. When it speaks of the rights of private persons, it means rights to hold for cultivation; and to hold subject to the limitations necessary to ensure the extraction of State minerals, counsel further argued. Defendants are no trespassers, he said, as they had a licence from the Government as owners of

the land, to enter the property and extract the terra-umbra subject to payment of compensation to the possessor for the temporary loss of his possession for cultivation purposes. Plaintiff's actual damage, counsel added, is no more than £1.15.5, the proportion of the land disturbed to the £20 which plaintiff discounted to his tenant from the £180 rents.

At the material period (1948-1953) plaintiff was holding the land in question under the provisions of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231. Section 4 (1) of this provides that private ownership of any land shall, subject to the provisions of this law or any other law in force for the time being, extend to the surface and to the substance of the earth beneath the surface and to the space above the surface, reasonably necessary for the enjoyment thereof, but shall not extend to minerals. And "minerals", as defined in the same law, includes all materials of economic value forming part of, or derived naturally from, the crust of the earth including mineral oil, pitch, asphalt and natural gas, but not minerals whilst in solution or peat, trees, timber and similar kinds of forest produce. (Section 4 (2)).

The nature of ownership or holding of land prior to the coming into force of the present Immovable Property Law was put an end to by section 3 of the law, sub-section (3) of which further provides that all immovable property known as *arazi mirié* and privately possessed as such at the date of the coming into operation of this law, shall be owned, held and enjoyed as private property. In view of these provisions it can no longer be said, in our opinion, that the ownership of plaintiff's plot belonged to the State and that plaintiff's title was merely that of possessor for purposes of cultivation. Plaintiff was the owner of the land; and his ownership extended to the surface and to the substance of the earth beneath the surface, reasonably necessary for this enjoyment thereof, but did not extend to minerals. These are the property of the State and, as we have already said, counsel for the plaintiff conceded that the terra-umbra found on plaintiff's plot was the property of the Government. Subject to this limitation (and subject to any other limitations imposed by other laws in force for the time being) plaintiff was entitled to the possession and enjoyment of his plot to the exclusion of all others including the State. The provisions of section 9 (1) (*b*) and section 13 (2) of the Mines and Quarries (Regulation) Law, 1953, are significant in connection with this point, although this law was not published until the 10th April, 1953.

The provision in the licence (exhibit 2) on which counsel for the defendants sought to justify the entering of his clients upon plaintiff's land, contained in clause (1) of the licence,

did not in our opinion authorize the defendants to enter plaintiff's land without his consent. The defendants were to "enter upon, work and export terra-umbra" from the area covered by the licence subject to the conditions therein contained, one of which was incorporated in clause 18 which reads as follows:

> "Nothing herein (in the licence) contained shall give the licensees any rights over or in respect of any private property held under proper title comprised in the said areas nor authorize the licensees, their workmen, servants or agents to do or cause, or permit to be done any act to the detriment of the rights of private persons or the property of private persons therein or therein contained".

We have it from the evidence that for a period of about 12 years, which elapsed from the issue of exhibit 2 to the defendants, until 1950 when they entered plaintiff's land to quarry umber, defendants obtained the owner's consent for any quarrying done on private land by a payment of a fee varying from one to six piastres per ton of marketable umber so quarried. We, therefore, find ourselves unable to accept the submission that defendants' action in carrying out the work done on plaintiff's land from 1948 until the institution of this action did not amount to a trespass in violation and disregard of plaintiff's legal rights on the land in question, trespass under the Common Law as well as under section 39 of our Civil Wrongs Law.

The next point for consideration is the remedy to which plaintiff is entitled for this trespass. Plaintiff claims damages measured (*a*) on the value of the umber extracted; and (*b*) for restoration of the land to its former state. He also claims an injunction restraining the defendants, their servants and agents from continuing the trespass.

In the circumstances of this case as they developed until the trial, we take the view that the making of an injunction is not really necessary in this case. There may have been good cause for claiming an injunction on the day of the filing of the writ but we do not think there is any probability of defendants re-entering plaintiff's land in future so as to justify the making of an injunction now.

As regards damages, it is clear from what we have already said that plaintiff is not entitled to damages measured on the value of the umber which, it was conceded, did not belong to plaintiff. We looked for guidance regarding this matter to the well-known treatise on the law of torts, Clerk and Lindsell, in the chapter under the heading "Trespass to land and Dispossession", in section 7, Measure of Damages, at p. 528, in the 10th Edition. We found that even if the

trespass consists of a mere user of the soil by passing over it without doing any damage, the damages recoverable will be the price which a reasonable man would be willing to pay for the right of user. And if the trespass consists in using a right of way over the land, the measure of damages is the usual charge for a wayleave in the district. This applies to trespass above ground as well as below ground, the learned author goes on to say, and is based on the principle that a man is not allowed to make a profit out of his own wrong. In England when the trespass consists in the wrongful working of coal, the measure of damages is the value of the coal when it first became chattel "that is the value of the coal at the pit-head less the cost of raising it to the surface but without making any allowance to the trespasser for the cost of getting and severing". This, however, is not applied to the present case as the umber of plaintiff's land was not his property.

Further down, in the same paragraph at p. 530, we find that "when the situation of the coal has been such that it would have been impossible for the owner to work his coal at a profit, the milder rule is resulted in the trespasser having to pay the usual royalty applicable to the district".

Here we have it from the manager of the technical work in the terra-umbra factory of defendants 1 (D.W. 4) that the fee payable to the owners of land in 1950-1951 was about six piastres per ton calculating the tonnage on the quantities delivered to the exporter. And the witness goes on to say that "in 1952 the fee payable was increased by arrangement with the owners of the land to one shilling per ton. It was because of claims by landowners which went as high as two shillings per ton that defendants 2 found it necessary to employ me in 1953 for the purpose of coming into arrangement with the owners beforehand and this is the practice followed in 1953", the same witness stated (D.W. 4 at p. 33).

We take the view that the measure of damages in this case should be what would put the plaintiff as owner of the land as near as possible the position to which he would find himself before the trespass. Assuming that defendants were willing to pay to him a reasonable charge for his consent to enter his land in order to carry out thereon works for the extraction of umber and assuming that plaintiff would be willing to give his consent for a reasonable charge, we find that the parties would probably meet at one shilling per ton delivered to the exporters. We find that this would reasonably cover all the loss or damage to the plaintiff resulting from the work carried on his land by the defendants including prospecting before 1950 and including the condition in which defendants left plaintiff's plot when they levelled the surface

in 1953. 2,681 shillings make £134.1.0. We take the view that this is the amount to which plaintiff is entitled by way of damages.

As regards the liability of the two defendants, we find that although there may have been in the circumstances of this case sufficient justification for joining defendants 1, the trespass was committed by defendants 2 and they are the only defendants liable to plaintiff.

There will, therefore, be judgment for plaintiff against defendants 2 for £134.1.0. Action against defendants 1 dismissed.

And there will be an order for costs in favour of the plaintiff against the second defendants including costs for a second advocate on the amount of damages awarded. This defendant should also pay costs to defendant 1 measured on the same scale.

This order for costs not to affect any other order for costs previously made in the proceedings.