

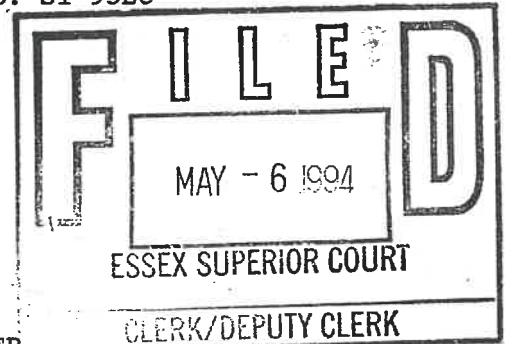
STATE OF VERMONT
ESSEX COUNTY, SS

PHILIP FAUTEUX and
CLAIRE FAUTEUX,
Plaintiffs

v.

MAURICE CONNARY,
LANCE SIMONS,
JULIE ALLEN, and
DENNIS ALLEN,
Defendants

ESSEX SUPERIOR COURT
DOCKET NO. S1-93Ec



FINDINGS, CONCLUSIONS and ORDER

This matter came before the undersigned for final hearing on January 20 and 21, 1994. Plaintiffs were present and represented by Steven A. Adler, Esq. Defendant Connary was present and represented himself pro se. Lance Simons was present and was dismissed as a defendant at the conclusion of his testimony as a witness. During the trial, Julie Allen and Dennis Allen were permitted to intervene as parties defendant pursuant to their Motion for Intervention filed on the first day of the trial. They were represented by Susan A. Davis, Esq.

Findings of Fact

Based on the credible evidence, the court finds as follows:

1. The plaintiffs, Philip and Claire Fauteux, own a large tract of land in the Town of Bloomfield. They purchased it in 1983. Their predecessor in title, Alphonse Sage, had acquired this land from three source deeds: a) one parcel was acquired from Hebert in 1968, who had acquired it from the brothers Brochu in 1956 and 1958, and it was identified as in Lot 9, Range 10; b) twenty-six acres was acquired from Everdale in 1971, and identified as in Lot 9, Range 12; and c) sixty-five acres was acquired from Corliss et al. in 1972, and was identified as in Lot 9, Range 11.

2. In 1968, when he acquired the first and largest of the above-described parcels, Alphonse Sage also owned a large tract of land directly to the east. In 1969 he sold the easterly property to Wood. The deed described the conveyed land as two parcels, one consisting of 270 acres in Lot 10, Ranges 10, 11, and 12, and the other consisting of 35 acres in Lot 9, Range 11.

3. Wood later sold land from the eastern tract to Defendant Maurice G. Connary by three separate deeds as follows:

a) In February 1982, Wood sold Connary that portion of Lot 10, Range 10 that he owned, plus enough land from Lot 10, Range 11 to make up 112 acres;

b) In April 1982, Wood sold Connary a parcel containing 140 acres which was the balance Wood had acquired from Sage except for 10 acres reserved; and

c) Later, Wood conveyed the remaining 10 acres to Connary who sold it to Sullivan.

4. In January 1983, E.O. Haynes, a surveyor now licensed in New Hampshire and licensed also in Vermont in the past, completed a survey of all of the land Connary had acquired in the second deed described above, which is the one in which 140 acres was purportedly conveyed. He did this in response to a request by Connary to survey what Connary had acquired in that deed. The survey itself states "Surveyed According to Maurice Connary's Deed." Haynes's survey depicts a total of 136 acres. Haynes found this to be within the range of consistency with the acreage stated in the deed as 140 acres. In his survey, Haynes showed a subdivision of the land into two parcels, a northerly piece consisting of 36 acres and a southerly piece consisting of 100 acres. This was done at Connary's request, as Connary intended to sell a full 100 acre parcel, and wanted a 100 acre parcel surveyed for this purpose.

5. In 1984, Connary sold the surveyed 100 acre piece to LAN.

6. In 1987, Connary sold the surveyed 36 acre piece to the north to

Kennett. At that time he also sold to Kennett all of the land he had acquired from Wood in the first of the three deeds, which was contiguous and to the north of the 36 acre piece.

7. Following these transactions, Connary purported to convey 28 acres to his father by a quitclaim deed in 1989. The property is not specifically described, but is referred to as being a portion of the land Connary acquired from Wood, and located at the southern end. Connary claims this is the twenty-six acres that he logged as described below. At the time of the quitclaim deed to his father, Connary did not own twenty-eight acres retained from the Wood acquisition.

8. At some point, Connary entered into a contract to sell a parcel of three acres of land in the vicinity of the Fauteux-Connary lands to Osgood. Osgood paid a deposit of \$4,000.00 and is making monthly payments. A deed has not been prepared as the transaction needs percolation tests or a deferral permit, for which Osgood will not sign. It is not clear where this parcel is located.

9. In the fall of 1992, the Fauteux property had not been surveyed. In September 1992, Connary began a logging operation on 26 acres of land along the western side of Lot 9, Range 11. A barbed wire fence encompasses the north, east, and southern edges of this tract. Connary accessed this land and his logging operation by crossing Fauteux land at two locations. The Fauteux' initially believed that the logging was being done on land owned by the abutting owner to the west, the Miller estate, and that Connary was trespassing on Fauteux land to get to the Miller land, upon which he was also trespassing. In September 1992, the Fauteux' sent Connary a Notice of Trespass forbidding Connary from entering or remaining on the Fauteux land.

10. Persons who lived in the area and had knowledge of the land contacted Olive Miller to notify her of the logging operation which such persons believed to be taking place on land held by the estate of her husband. Ralph Farnsworth, Jr., the son-in-law of Mrs. Miller, became involved on behalf of the estate. Thereupon, the Miller estate arranged for a survey to be done by Robert Farnsworth of Farnsworth Surveyors (unrelated to Ralph Farnsworth, Jr.) of the entire boundaries of the Miller estate property. At the same time, the Fauteux' arranged for a survey of their land to be done by Norbert Blais, licensed surveyor from Newport, Vermont. When these two surveys were complete, both surveys showed that the area in which the Connary logging operation was located was land owned by Fauteux. Both surveys establish the boundary between Miller and Fauteux land on the same line along the lot line between Lot 8, Range 11 and Lot 9, Range 11. Both surveys indicate that the barbed wire fence along the eastern boundary of the twenty-six acres where Connary logged was a fence of convenience and not a boundary line fence.

11. Connary continued to claim ownership of the twenty-six acres as well as a legal right of access to it, as described below. He continued his logging operation in reliance on his own interpretation of the deeds until stopped from doing so by temporary restraining order issued in that case on January 20, 1993 and then a preliminary injunction issued in this case on February 2, 1993.

12. In the meantime, the Blais survey of the Fauteux property had brought to light other areas of dispute between Fauteux and Connary. Specifically, Connary claims that the Fauteux property does not extend as far to the east as the Blais survey shows, and he asserts that after his sales to Kennett and LAN, he continued to own a strip of land between Fauteux and the lands he sold to Kennett and LAN. This is the area which he claims he retained title to and from which he claims he was entitled to sell land to Osgood and Allen. The

Fauteux' claim, on the basis of the Blais survey and other facts described below, that the parcels sold to Kennett and LAN directly abutted theirs, and that neither Connary nor persons acquiring from him have a right to any land between Fauteux and the Kennett/LAN parcels.

13. In June of 1993, Connary entered into a lease/purchase agreement with Defendants Allen whereby he agreed to convey to them a parcel of 20 acres located in Lot 10, Ranges 10 and 11, or in other words, east of where Connary claims the Fauteux eastern boundary is and west of the where the Fauteux' claim their boundary is, and therefore within land claimed by Fauteux. The Allens have been paying Connary toward the purchase of this land.

14. At the trial, all parties agreed that the court should resolve all disputes between the parties as to their respective property interests and the location of boundaries, in addition to those issues and claims raised in the initial complaint.

Twenty-six acres where logging occurred

15. The twenty-six acres in dispute are located along the western edge of Lot 9, Range 11 on land abutting the Miller estate and are shown as a green-hatched area on Plaintiff's Exhibit 2. Lot 9, Range 11 is a lease lot. Lot 9, Range 11 is bisected by a brook which divides it into a portion in the southeast corner which comprises about one quarter of the lot, and the remainder as a second portion. The twenty-six acres in dispute is all in the larger remainder portion. The one-quarter of Lot 9, Range 11 located southeast of the brook is part of the 136 acres Connary bought from Wood and most of it is part of the 100 acres Connary sold to LAN.

16. The reason that people in the area, including Philip Fauteux, believed that this twenty-six acre piece belonged to the Miller land instead of the Fauteux land is that the old barbed wire fence sets it off from the rest of

the Fauteux land in Lot 9, Range 11. The barbed wire fence follows the contour of the edge of a bank. There are some indications that the twenty-six acres may have been used as pasture in conjunction with the pasture land on the abutting Miller estate land. When the Fauteux' logged off all their land at some point in the past, they did not log to the west of the barbed wire fence, believing that the barbed wire fence was a boundary fence and that the Miller estate owned the land west of the fence. There are no boundary markers along the boundary line between Fauteux and Miller as surveyed by both Farnsworth and Blais. There are some fragments of stone walls located on the Miller side near the Miller-Fauteux boundary line as surveyed by both Farnsworth and Blais, but they are fragments and their direction, length, and location do not indicate that they represent boundaries.

17. Connary's claim to ownership of the twenty-six acres is based on his contention that this parcel is separately described in the deed from Wood to Connary in April 1982 as thirty-five acres, though he concedes that it is less than thirty-five acres. He further asserts that he did not sell any of this separate parcel to LAN and that he therefore retains ownership of it. The evidence does not support this interpretation. The Haynes survey in 1983 showed everything that Connary had acquired from Wood in that April 1982 deed, and it did not include any land west of the brook. The court finds that the 35 acres in Lot 9, Range 11 referred to in the April 1982 Wood-Connary deed was the smaller portion of Lot 9, Range 11 located to the east of the brook. A sketch by a surveyor named Garcelon that is filed in the Bloomfield Town Records depicts this exact portion of Lot 9, Range 11 east of the brook and the number "35" appears in it on the sketch. The number "112" appears in the sketch on a depiction of the full land in Lot 10, Range 11. Lots in Bloomfield were known to have 112 acres or sometimes more rather than the 100 acres

included in lots in some other towns. Now that the area has been surveyed, it appears that the area to the southeast of the brook is not as large as 35 acres and is probably less than 20 acres. The discrepancy in acreage is explained by several factors: none of these parcels had been surveyed, so the acreage numbers were rough estimates; lots in Bloomfield were known to be large, so that an estimate of 35 acres is not proportionally out of a reasonable range; and the eastern lot line of Lot 9, Range 11 as used by owners was further east than the theoretical original lot line, making it understandable that 35 acres might be considered to be in Lot 9, Range 11 even if the actual amount based on the theoretical original lot line was less. The court finds that the plaintiffs own the twenty-six acres located west of the barbed wire fence on which Defendant Connary conducted his logging operation. That twenty-six acres are included within a parcel of land which has been described since 1905, when the Selectmen of the Town of Bloomfield first leased it, as that part of Lot 9, Range 11 "lying southwest of the Mill Brook, so-called." The twenty-six acres have never constituted a separate parcel of land, but rather have been included within the larger parcel to the southwest of the Mill Brook in Lot 9, Range 11 that has always been within the Fauteux chain of title.

17. Connary cut 180,000 board feet of lumber from the twenty-six acres. The stumpage value, or value to be paid to the owner for this amount of lumber, is \$18,000.00. Upon completion of the logging operation, Connary abandoned the site without cleaning up after the logging work. Downed logs and slash are strewn everywhere. The skidders created deep ruts in the land. Plaintiff's land has been damaged as a consequence of the logging work Defendant Connary did on the twenty-six acres, in addition to the loss in value of the growing timber.

Rights of way

18. When Sage conveyed to Wood, he reserved for himself, "his heirs and assigns, the right-of-way to pass and repass with necessary men, horses, vehicles, and equipment, and to grade, gravel, plow and keep in passable condition an existing road leading from the Mill Brook Road, so-called, and following Mill Brook across the within described premises to Land of Alphonse Sage and lands of the International Paper Company." Connary asserts that as a successor in title to Sage, he acquired a right of way by this provision, and that it entitles him access to the twenty-six acres across Fauteux land. He acknowledges that he crossed Fauteux land at two locations with skidders and equipment to carry out the logging operation, and that he did not have permission from the Fauteux' to cross their land. He claims he did not need permission since he had a legal entitlement to cross Fauteux land through the exercise of rights of way he held as successor in interest to Sage. The evidence does not support Connary's claim. At the time Sage gave this deed, he was owner of both the land he was conveying to Wood and the abutting land now owned by Fauteux. The land owned by International Paper Company was land located to the north of Sage land, including both the west (Fauteux) and east (Wood) parcels. Any right of way created in this deed ran from a town road to the land now owned by Fauteux and to provide access to the town road for Sage and his heirs and assigns with respect to the Fauteux land, and not to provide a right of way for Wood and his heirs and assigns. Connary's testimony that Wood showed the right of way to him at either of the two locations Connary used to access the logging operation on the twenty-six acres is not credible. The court finds that Connary had no right of way to cross Fauteux land at any point.

19. Connary's use of the Fauteux land at two points to access his logging operation resulted in damage to the land. The skidders used in the logging operation dug deep ruts into the land and left messy, rutted skidder trails.

20. The value of the damage to the plaintiffs' land caused by the combination of the mess left behind by the logging operation and the use of the land for access to the logging operation at two locations is \$10,000.00. The specific monetary award is based upon an estimate by Philip Fauteux which was not rebutted by the Defendant Connary.

Common boundaries

21. When Hebert owned the Fauteux land between 1956 and 1968, the property was bounded on the east by property then owned by Sage (later Wood and then Connary). This boundary was marked with blazes on trees. The line generally followed the course of a brook, which crossed back and forth over the blazed boundary line. When Sage conveyed his easterly lands to Wood, he did not purport to convey all of Lot 10, Range 10 and Lot 10, Range 11 to Wood; rather the descriptions included portions of those lots. When Wood conveyed the easterly lands to Connary, Wood specified that he was conveying that portion of Lot 10, Range 10 "owned by me", and enough of Lot 10, Range 11 to make up 112 acres. The Wood-to-Connary deed did not use the lot line between Lots 9 and 10 as a monument for description purposes, and did not even refer to it. When Haynes surveyed the land described in the Wood-Connary deed in 1983, he found the same blaze marks Hebert had seen. They followed the course of Mill Brook along the easterly line of Sage's retained land. Haynes took such blazed line as the established eastern boundary of the Sage land and the western boundary of the Connary land, and he based his survey on it. When the Fauteux' bought the land in 1983, Philip Fauteux walked the land with Antonio Hebert, who had owned it previously. They encountered Connary near the blazed

line along the general course of the brook. At that point Connary had purchased from Wood and had not yet sold to either LAN or Kennett. Hebert asked Connary about the location of the common boundary between Fauteux and Connary. Connary said, "the brook is the line." When Fauteux logged his property, he logged up to the blazed line as marking the easterly boundary. Persons who hunted in the region were familiar with the blazed line along the brook and understood it to be the boundary between the Fauteux and Connary/Kennett/LAN parcels. When Connary conveyed to LAN and Kennett, the deeds were based on the Haynes survey which incorporated the blazed line along the Mill Brook as the western boundary of the lands owned by Connary.

22. The blazed line is located further to the east than the theoretical original lot line between Lot 9, Ranges 10 and 11, and Lot 10, Ranges 10 and 11. There is a discrepancy between the blazed line adopted by the owners on the ground and the theoretical original lot line established when the Town was laid out. The language of the deeds refers only to the lots and ranges without further description. Use of the blazed boundary on the ground results in greater acreage in the lots owned by Fauteux and lesser acreage in the lots owned by Kennett and LAN than would be the case if the theoretical lot lines were used. Nonetheless, the boundary was clearly marked on the land by the blazed line along the course of the brook and thus everyone had notice of it. The Fauteux' and their predecessors in title have claimed the blazed line as their eastern boundary line by markings on the land for over 35 years. The Haynes survey in 1983 incorporated the use of the blazed boundary line, and Kennett and LAN acquired their title based on it. The language of Connary's deeds to Kennett' and LAN did not indicate any reservation of abutting land within Lot 10, indicating Connary's acceptance of the blazed boundary line in 1984 and 1987.

23. There is a piece of land shaped in a semicircle located west of the brook and west of land sold to LAN and within Lot 10, Range 11 and east of the blazed boundary line described in paragraph 21. above. It was part of the property conveyed to Connary by Wood. Haynes left it off his survey when he laid out the land Connary acquired from Wood, as he followed the centerline of the brook at that location rather than a continuation of the blazed lot line, so the semicircle of land was not included in the conveyance to LAN. The Fauteux' do not claim it as it is located east of the blazed boundary line. The evidence establishes that Connary acquired it from Wood and has not conveyed it out. Connary owns that parcel.

24. There is also another parcel of land that remains in Connary's ownership, as it was acquired by Connary from Wood and not conveyed out. It is a rectangular piece along the eastern half of the southern edge of Lot 9, Range 11. Fauteux does not claim ownership to this piece. It is depicted on the Blais survey admitted in evidence as Plaintiff's Exhibit 2.

25. The evidence did not establish the location of the property Connary purported to convey to the Allens. By inference, the court finds it to be located within the area described above as being east of the theoretical lot line between Lot 9 and Lot 10 but west of the blazed boundary line on the ground between Fauteux and LAN. If that is indeed where it is, it is land in the ownership of Fauteux as set forth above, and Connary had no authority to convey it to the Allens.

Attorneys fees and costs

26. Plaintiffs notified Defendant Connary in September 1992 that they considered him to be trespassing and served him with a notice of trespass. Despite such notice, and after several meetings with Fauteux and others to

clarify the status of ownership of the twenty-six acres, Connary continued to log the twenty-six acres and use the Fauteux land for access to his logging operation at two points. Connary was on notice that the Fauteux' position was that the twenty-six acres was owned by either Miller or Fauteux, but not by Connary, and that in any event Connary had no right to cross Fauteux land at all, much less with heavy logging equipment, to get to the twenty-six acres. Connary actively continued his logging activity despite such notice and only stopped several months later when ordered to do so by the temporary restraining order in this case. The court finds that Connary's cutting of trees on the property of plaintiffs was intentional, and that Connary intentionally used Fauteux land for access.

CONCLUSIONS

Based on the foregoing findings and consideration of the relevant principles of law, the court concludes as follows:

1. The Fauteux' own all the land shown as theirs on the Blais survey, which is Plaintiff's Exhibit 2. Connary does not own the 26 acres which he logged starting in September 1992. Specifically, construction of the deeds shows that the 35 acre piece in Lot 9, Range 11 described in the Wood-Connary deed of April 1992 does not include the twenty-six acres logged by Connary. Connary's interpretation that he owns the twenty-six acres he logged is inconsistent with the status of title of both the Fauteux land and Connary lands as of that date, since no deed includes a description of any parcel resembling a parcel of twenty-six acres in that location. On the contrary, the interpretation that the 35 acre piece in Lot 9, Range 11 described in the Wood-Connary deed of April 1982 is the southeast portion of Lot 9, Range 11 (i.e., the portion to the south and east of the brook) is consistent with prior and

later deeds (Sage-to-Wood and Connary-to-LAN); with the Garcelon sketch in the Bloomfield Land Records; and with the Haynes survey done in 1983 for Connary and at his request and in accordance with his objectives at the time. Since the 35 acres referred to in the Wood-Connary deed was conveyed by Connary to LAN, Connary did not retain ownership of it. In September 1992 when he began logging, the only land Connary continued to own in the area was the semicircle west of the brook and the small rectangle at the south east corner of Lot 9, Range 11. He owned nothing in the western part of Lot 9, Range 11, which is where he was logging.

2. Connary has no right of way across Fauteux land. Construction of the reservation of a right of way by Sage in the Sage-Wood deed, upon which Connary relies, based on well-established principles of property law, shows that the person who retained a right of way was Sage, and he did so only in his capacity as owner of the property now owned by Fauteux. The right created was an appurtenant easement benefiting the Sage property to maintain an access route to other property retained by Sage. Hudson v. Farrar, 128 Vt. 410 (1970). The property thus benefitted was transferred to Fauteux. If the right of way was transferred at all it would have been acquired by Fauteux for passage over the Wood property to the Fauteux property. In any event, Wood acquired no rights of way in the deed from Sage, and therefore had none to pass on to Connary. Although Connary is a successor in title to Sage, he is not a successor in title as to the property interest in the right of way. The right of way that Sage reserved does not cross Fauteux land, but crosses the land that Connary acquired from Wood and sold to LAN. Thus, such right of way does not cross Fauteux land in the first place, and is not held by Connary in the second. Connary's reliance on the language in the deed was misplaced, as such language conferred no rights upon him. Sophisticated knowledge of property law

is not needed in order to figure this out; a common sense reading of the right of way language in the deed itself, together with consideration of the other deeds in the chains of title of the abutting parcels, also leads easily to this conclusion.

3. Connary owns the small semicircle of land west of the brook and east of the blazed line in Lot 10, Range 11. This is a piece of serendipity for Connary. It is a result of the fact that Haynes did not include it in his survey of the land Connary acquired from Wood in April 1982; thus it was not conveyed out in the deed from Connary to LAN. Fauteux does not claim it as he claims only as far east as the blazed line, and the semicircle is further east than that. Accordingly, Connary retained ownership of it even after he conveyed the balance of his land in Lot 10, Range 11 to LAN, and therefore retained authority to convey his interest in it to a successor in interest. There is no legal access to it across lands now owned by the Fauteux'.

4. Connary owns land abutting Fauteux at the southern end of Lot 9, Range 11. As with the semicircle parcel, when Connary conveyed to LAN, he omitted from the deed a description of a rectangular piece of land that he had acquired from Wood. How this happened is unexplained, as it appears that Haynes intended to survey everything Connary acquired from Wood, and that all such lands were intended to have been conveyed to LAN, since the Haynes survey does not show any land to be reserved by Connary as grantor. Nonetheless, Fauteux does not claim it and it appears that it is left over in Connary's hands after the out-conveyance to LAN. Thus, as between Fauteux and Connary, only Connary has an interest in it.

5. The Allens do not own any land shown on the Blais survey as owned by the Fauteux'. No one acquiring title to land from Connary has a valid property interest in any lands shown on the Blais survey as owned by the Fauteux'.

Since Connary did not own any lands west of the blazed boundary line between Lots 9 and 10, he had nothing to convey to the Allens in this region. If he gave the Allens a lease/purchase agreement, such instrument was ineffective to convey a real or equitable interest in property, since Connary as grantor had no interest. The transaction may have provided the basis for a breach of contract action on the part of the Allens against Connary, but any attempt at conveyance of a property interest was wholly ineffective to convey such property interest. A grantor can only convey such interest as he or she holds, and no more. Sheldon Slate Products Co. v. Kurjiaka, 124 Vt. 261 (1964). Therefore, any claims of the Allens to an interest in lands east of the theoretical lot line and west of the blazed boundary line between Fauteux and LAN or Kennett are without merit.

6. By the terms of 13 V.S.A. Section 3606, if a person cuts down growing trees without the owner's permission, the injured party may recover treble damages in an action on the statute. "However, if it appears on trial that the defendant acted through mistake, or had good reason to believe that the trees, timber, wood, or underwood belonged to him, or that he had a legal right to perform the acts complained of, the plaintiff shall recover single damages only, with costs." In their complaint, plaintiffs have requested treble damages under this statute. The evidence has established that Connary cut down growing trees on the Fauteux property without the permission of either Philip or Claire Fauteux. Connary's defense to the case was that he believed he owned the twenty-six acres on which he cut based on provisions in the deeds in his chain of title. A careful reading of these deeds in combination with all other deeds in chains of abutting parcels shows that Connary's interpretation was not correct. Nonetheless, it is understandable that a person in Connary's position might interpret the language in his own deeds in the manner that Connary did.

Thus his claim that he acted on the basis of deed provisions provides, just barely, "good reason to believe that the trees. . . belonged to him, or that he had a legal right to perform the acts complained of. . . ." Accordingly, while plaintiffs are entitled to recovery under the statute, their recovery is limited to single damages only. While the court would be inclined to award treble damage recovery for losses occurring after notice of boundary dispute, Ripchick v. Pearsons, 118 Vt. 311 (1954), the evidence does not provide the court with a basis for making this distinction.

7. Based on the statute, the Fauteux are also entitled to recover costs as well. Plaintiff's attorneys fees incurred in the action as well as direct court costs are included in the costs to be awarded under this specific statutory authorization. Under the American Rule, if a statute authorizes recovery of costs, then attorney's fees may be recovered. Absent such statutory authority attorney's fees will not be included in an award of costs. Robes v. Town of Hartford, Vt.S.Ct. No. 92-098 (December 10, 1993). A further hearing on the reasonableness of plaintiffs' costs will be held upon the defendant's request after plaintiffs have submitted an affidavit with an itemization of costs incurred.

8. The measure of damages to which the plaintiffs are entitled resulting from the unlawful cutting of trees varies with the kind, condition, location, and use of the trees. Lavalette v. Noyes, 124 Vt. 353 (1964). In this case, the land was timberland. Failure to clean up in the woods after a logging operation on timberland amounts to damage to timberland. Therefore, recovery is not limited to the value of the stumpage of the cut logs, but includes the damage to the property as well. "When the value of the trees separate from the soil will not furnish just compensation, the injured owner may resort to the rule" that the owner be compensated for the difference in the value of the

land before and after the trespass. Lavalette at 356.] Therefore, plaintiffs are entitled to recover the stumpage value which they as owners would have received had the timber been cut at their direction, established by the evidence as \$18,000.00, together with the value of the damage to their property from the mess left as a result of the logging, established by the evidence as \$10,000.00.

9. Where prerequisites are shown, an injunction may issue in an action for declaratory relief. Graves v. Town of Waitsfield, 130 Vt. 292 (1972). Injunctive relief may be granted where it is shown that the party seeking the injunction will suffer irreparable harm if it is not issued. Vermont Division of State Bldgs. v. Town of Castleton Bd. of Adjustment, 138 Vt. 250 (1980). The record reveals that Connary has shown a history of disregarding plaintiff's property interests after having been given notice. Therefore, declaratory judgment in this case is not an entirely adequate remedy. An injunction is needed to protect plaintiffs' interest in the enjoyment of their land without interference from defendant Connary. Campbell Inns, Inc. v. Banholzer & Co., 148 Vt. 1 (1987).

ORDER

Based on the foregoing Findings and Conclusions, it is hereby ORDERED:

1. Plaintiffs are declared owners of all property depicted as owned by them on a survey entitled "Plan of Land located in Bloomfield, Vermont prepared for Philip & Claire Fauteux, Scale: 1"=300', Date: January 6, 1994, Prepared by Blais Surveying Co., Newport, VT." It is hereby declared that Defendant Connary and Defendants Allen have no interest in any such lands and premises.
2. Judgment is entered in favor of Plaintiffs Fauteux against Defendant Connary in the amount of \$28,000.00.
3. Plaintiffs are entitled to an award of costs, including reasonable

attorneys fees, against Defendant Connary. The Plaintiffs have thirty days to submit an affidavit containing an itemization of such costs. Defendant Connary shall have ten days thereafter to request a hearing on the reasonableness of the costs requested. If no hearing is requested, the costs requested by plaintiffs' affidavit will be awarded as part of the judgment.

4. Defendants Connary and Allen are permanently enjoined from entering onto the lands of plaintiffs as established in Paragraph One of this order.

Dated at Guildhall, Vermont this 6th day of May, 1994.

Mary Miles Teachout
Mary Miles Teachout
Superior Judge

Virginia Carr
Virginia Carr
Assistant Judge

Allen Hodgdon
Allen Hodgdon
Assistant Judge