

bill with costs, but for the opinions it entertains, that by so doing injustice would be done to the appellants, who by reason of the lapse of time and altered condition of things cannot now realize, from the complete execution of the contract even supposing that it could be completely executed, that benefit to which they are entitled, and whose remedy for damages on the injunctive bond is at least doubtful and imperfect. The Court is therefore of opinion that as the specific execution of the contract has been prevented by the interference of a Court of equity, at the instance of the appellants, that Court ought at the request of the appellants to repair the mischief which its interference has produced. And the Court is of opinion, that it is unnecessary for the appellants to bring an over and in equity for relief, but they may and ought to draw full relief in this suit according to the principles settled by this Court in the case of *Pate against McQueen & fourth Randolph*, one hundred and sixty four and *Taylor against Dale & fourth brother* ninety three. And the Court is of opinion, that the measure of relief to which the appellants are entitled is, the value at the time the injunction took effect, to wit, the twenty fifth day of June 1856, of all the pine and poplar timber then on the Brecht tract of land in the said contract mentioned, measuring fifteen inches in diameter and upwards at the stump, whether before that time felled by the appellants under the contract or then still standing in the woods, and in the condition in which it then was, subject however to a deduction of the amount of the bond and last installment of nine hundred dollars, which was payable for said timber under said contract on the first day of September 1857, that an account should be taken by a commissioner of the said Circuit Court of the said timber and value thereof as aforesaid, and of the balance due to the appellants after making said deduction, and that a decree should be rendered in their favor against the appellees for the said balance with interest from the said twenty fifth day of June 1856, till payment, and the appellants costs of suit in the said Circuit Court. It is therefore further decreed, and ordered that the cause be remanded to the said Circuit Court, to be further proceeded in, according to the principles herein before stated.

Which is ordered to be certified to the said Circuit Court.

Appellants costs in the
Court of Appeals

3952 38 1/2

Attest

Teste

W. F. Starker Clk.