



TIM-BER-R-R-R!!!!!!!!!!

by W. Christopher Barrier
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Lawyer Coon Dog Twichell was in a contemplative mood, gazing out the window of his office. His view focused on a row of Bradford pear trees whose leaves autumn had turned to shades ranging from burgundy to a brilliant orange.

His reverie was shortened by a commotion in the reception room, caused by his sometime client Crittenden Roberts, who was loudly demanding to see Twichell.

Sangfroid in spades...

Roberts was in a state of such joyous agitation that Twichell knew his visit just had to relate to Ashley Chester. Only a conviction that he had Chester in some sort of bind could engender that level of glee in Crit Roberts. Worse than that, Roberts was waiving a statute book, so Twichell also knew he was about to get a lecture from Roberts about what the law really was.

Gotcha good...

"I've got him now!" crowed Roberts. "Ashley Chester is going to be out big bucks! He cut down some beautiful ornamental pine trees on my property, and now he owes me three times their replacement cost! Plus lawyer fees!!!" The statute book Roberts was waiving contained Ark. Code. Ann. §18-60-102(a), which basically provides, among other things, for treble damages for willfully cutting some one else's timber.

Advance two steps...

Fortunately for Twichell, he had on his desk the Arkansas Advances Reports containing the case of *Linebarger v. Owenby*, 79 Ark. App. 61 (2002), as well as a letter from Ashley Chester's lawyer J. Noble Portis, hand-delivered that morning, containing a check. According to Portis's letter, Ashley Chester and Crit Roberts owned roughly equal blocks of pine forest fronting on a major logging road, separated very roughly by a minor logging road.

Can't see the forest...

Ashley Chester's timber manager P.T. Crewzer had harvested several acres of mature trees from Chester's property near the Chester-Roberts boundary. He had a survey in his truck. He harvested up to the minor road.

He looked carefully at the survey, but did not discover that it contained an error. It showed the road on the boundary, but, in fact for several hundred yards of its length, the road was not on the boundary line, rather Roberts owned a ten-foot strip on the Chester side of the road---which Crewzer had cut.

...for the trees...

The letter described the amount for which the Roberts timber had been sold, for which the check was enclosed, along with an apology.

"Okay, Crit, here's what the *Linebarger* case tells us about this situation:

"(1) You get treble damages only if the cutting was deliberate or careless. It looks like here that Chester's man did everything he could to do it right. (Proceeding without a survey is always dangerous.)

"(2) You get replacement costs only if the trees are ornamental AND that replacement cost is not grossly disproportionate to the value of the property. According to the court, if replacement costs were much higher than the added value to the property, then a before-and-after test was more appropriate.

"(3) You're entitled to treble damages, if at all, for the value of the timber, not replacement value.

"(4) The statute does not call for attorney's fees, regardless of the amount or measure of damages.

"You've got to look at the facts of each case. The *Linebarger* court cites earlier cases where the trees were ornamental, but not actually visible from the claimant's house. Can a loblolly pine be ornamental? Maybe so, but not when it's basically on a tree farm.

"So, what you're entitled to is what you could've sold those trees for at market rates, not three times that amount and not replacement cost. Which is what this check appears to amount to, according to this accounting from J. Noble Portis."

Crit Roberts jumped up and began to splutter. Coon Dog Twichell gently tucked Ashley Chester's check in Roberts' shirt pocket and led him out the front door. Then he went back to admiring the Bradford pears...

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