Redressing the Loss of Slave-Era Trees: *Evans v. Bedsole* and What Louisiana Timber Trespass Law Can't Do

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INTRODUCTION

In August 1984 a tree service cut the overhanging limbs of six pecan trees adjoining Ollie Grove Road in Morehouse Parish, Louisiana, mistakenly believing them to be on the public right-of-way.[1] In fact, the trees stood on property belonging to Barbara Harkness, whose grandfather had planted them sixty years before, and whose recently-deceased father had carefully maintained them.[2]

Several months later, in DeSoto Parish, Louisiana, contractors working for B.R. Bedsole Timber broke through a four-strand barbed wire fence, knowingly entered Johnny Evans' land, and reduced 2.4 acres of trees to woodchips.[3] Some of those trees had stood on the family land since Evans' great-grandfather Noah Evans was enslaved there.[4]

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1. *Harkness v. W.K. Porter*, 521 So.2d 832, 833-34 (La. Ct. App. 2nd Cir. 1988).
2. *Id.*
3. *Evans v. B.R. Bedsole Timber Contractors*, 521 So.2d 837, 838 (La. Ct. App. 2nd Cir. 1988).
4. *Id.*

Harkness and Evans both filed suit for timber trespass.[5] Both sought triple damages under Louisiana's timber trespass statute as well as mental anguish damages under the more general offense (tort) law.[6] Harkness was awarded a total of $1367.36, and Evans received $1291.76.[7] Neither received everything they sought. Harkness, whose six pecan trees survived their accidental trimming, did not receive triple damages for the mistaken trespass, but she did receive $1250 in damages for her mental anguish.[8] The intentional trespass on Evans' land triggered triple damages (totaling about $1000), but nothing was awarded for his mental anguish, despite far more egregious facts.

An intersectional, race-conscious analysis helps us understand why the damage suffered by Barbara Harkness, a White woman, excited the court's sympathy and warranted an award of mental anguish damages, while the damage suffered by Johnny Evans, the Black descendant of an enslaved man, did not. That analysis also exposes how background structures that privilege White property, White families, and White pain render devices like timber trespass and mental anguish damages radically insufficient to redress an injury like the one suffered by Johnny Evans. In Part I, I review timber trespass under Louisiana law, including its triple damages provision. In Part II, I discuss the availability of mental distress damages for timber trespass. Finally, in Part III, I use Critical Race Theory to analyze the 1988 case of *Johnny Evans v. B.R. Bedsole Timber Contractors*, especially in comparison to *Harkness v. Porter*, a case with very similar facts but a quite different outcome.

I. TIMBER TRESPASS UNDER LOUISIANA LAW

"Timber trespass" is the real property tort for wrongfully entering upon the land of another and removing trees or wood. According to Louisiana Supreme Court Justice Jeanette Knoll, "No one disputes tree piracy is a serious concern in this State in which remote tracts of timberland and absentee co-owners abound."[9] This concern is amplified because timber is Louisiana's top-grossing agricultural commodity.[10] To deter and punish this conduct, Louisiana enacted a statute that imposes triple damages not only on the willful and intentional timber trespasser, but also on the good faith actor who should have known their conduct was without the consent of the owner. Some version of this provision, referred to as the "timber trespass" or "timber piracy" statute,[11] has been in effect since 1974.[12] Louisiana Revised Statutes Title 3, § 4278.1, "Trees, cutting without consent,"

5. *Harkness*, 521 So.2d at 833; *Bedsole Timber Contractors*, 521 So.2d at 838.
6. *Harkness*, 521 So.2d at 834; *Bedsole Timber Contractors*, 521 So.2d at 842.
7. *Harkness*, 521 So.2d at 836; *Bedsole Timber Contractors*, 521 So.2d at 841.
8. *Harkness*, 521 So.2d at 836.
9. *Sullivan v. Wallace*, 51 So.2d 702, 712 (La. 2010) (Knoll, J., dissenting).
10. Olivia McClure, *AgCenter experts: Louisiana agriculture suffers at least $584M in damage from Hurricane Ida*, LSU AG CENTER (Sept. 23, 2021), https://www.lsuagcenter.com/articles/page1632415649946.
11. *Wallace*, 51 So.3d at 706.
12. Formerly La. R.S. § 56:1478.

currently provides in pertinent part that "It shall be unlawful for any person [or their agent] to cut, fell, destroy, remove . . . any trees . . . growing or lying on the land of another, without the consent of . . . the owner or legal possessor, or in accordance with specific terms of a legal contract or agreement."[13] "Willful[] and intentional[]" violation results in liability for three times the fair market value of the trees plus reasonable attorney fees and costs.[14] The same penalty is imposed on a good faith violator if they should have been aware they needed consent from the owner.[15] A good faith violator's failure to make this payment promptly adds liability for attorney fees and costs.[16]

Since it was first enacted, the Louisiana courts have had numerous occasions to interpret and apply the statute. The Louisiana Second Circuit Court of Appeals noted in 1987 that under prior law, the law did not actually punish or deter careless trespassers willing to buy the trees they cut at fair market value.[17] As Justice Knoll noted in 2010, "in accordance with the Legislature's intent, this statute has operated as a protection for . . . landowners and as a clear deterrent due to its severe penalties."[18]

The statute is intentionally punitive, and primarily for the benefit of those in the timber business. In 2005, the Supreme Court of Louisiana stated this statute "was enacted by the legislature to impose a penalty upon those who disregard the property rights of timber owners."[19] In concurrence, then-Associate Justice John Weimer explained both the scope and purpose of the law: "[T]he statute was primarily designed to protect those with interests in trees from loggers who entered upon property to harvest timber unlawfully. The focus of [the statute] is on trees *as timber*."[20] On that basis, recovery is centered around "trees *as timber*" rather than other forms of damages such as mental anguish.[21] Despite the focus on timber merchants, "there is nothing in the language of the statute to *prevent* the application of the statute in a case involving a stately or ornamental tree with substantial sentimental value in a residential front yard."[22] In that situation, the plaintiff "would be limited to the fair market value of the tree *as timber*, plus potentially treble damages, plus attorney fees."[23]

Citing Justice Weimer's concurrence, the Supreme Court in *Sullivan v. Wallace* reiterated that the legislative purpose of the timber trespass statute "is

13. La. R.S. § 3:4278.1(A).
14. La. R.S. § 3:4278.1(B).
15. La. R.S. § 3:4278.1(C).
16. La. R.S. § 3:4278.1(D).
17. *Jones v. Don Edwards Timber Co.*, 516 So.2d 1256,1257-58 (La. Ct. App. 1987).
18. *Wallace*, 51 So.2d at 712 (Knoll, J., dissenting).
19. *Hornsby v. Bayou Jack Logging*, 902 So.2d 361, 369 (La. 2005), *cited with approval in Wallace*, 51 So.3d at 707.
20. *Id.* at 371.
21. *Id.*
22. *Id*.
23. *Id.* at 372 (emphasis added).

to protect those with interests in trees from loggers who enter their property without permission to harvest timber illegally."[24]

In *Mathews v. Steib,* the Louisiana Court of Appeals applied the statute to trees cut down in a "buffer zone" between neighbors.[25] The court explicitly rejected the defendant's argument that the statute is limited to merchantable timber because "does not distinguish in its plain language between merchantable timber or other trees and bushes."[26] Therefore, the statute "applies to all persons who enter property and remove any trees without consent of the owner."[27]

Since it was enacted, Louisiana courts have had occasion to apply the statute not only to the loss of merchantable timber, but also, *inter alia*, pine seedlings,[28] large camellias,[29] a single water oak,[30] and groups of non-merchantable trees.[31] Whether a tree is protected does not depend on whether its owner intends to market it as timber. But it is valued only as timber, regardless.

There are further limits to the scope of the statute. In *Kahl v. Luster*, the court did not simply analyze whether a tall enough camellia is a "tree."[32] The court also found that, given the purpose of the Timber Piracy Statute, its use to protect one homeowner's foliage against their neighbor's actions was "inconsistent with legislative intent."[33] The court focused on appropriate defendants: "The defendants in this action are not loggers, nor are they deriving economic benefit from their actions…. [T]hey are merely neighbors who wrongfully trimmed the plaintiffs' camellias on several occasions because the owners would not properly maintain their lot."[34] Thus, "[a]pplying the Timber Piracy Statute in this context leads to an absurd result, conflicts with the legislative intent of the statute, and would result in an unwarranted expansion of its scope."[35]

Taken together, the Louisiana jurisprudence of § 4278.1 licenses (and perhaps mandates) its application to any "tree" removed without consent from the land of another, especially by a commercial actor. But its punitive triple damages provision, reflecting the legislative intent of the statute, is calculated by

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24. *Wallace*, 51 So.3d at 709 (citing *Bayou Jack Logging*, 902 So.2d at 371).

25. *Mathews v. Steib*, 82 So.3d 483, 486–87 (La. Ct. App. 1st Cir. 2012).

26. *Id.*

27. *Id.* at 487.

28. *Loutre Land and Timber Co. v. Roberts*, 72 So.3d 403, 408 (La. Ct. App. 2nd Cir. 2011) ("We find that the destruction of pine seedlings in this case does not warrant the imposition of treble damages").

29. *Kahl v. Luster*, 110 So. 3d 1101, 1105 (La. Ct. App. 2012) ("[T]he Kahls' camellias were of a substantial height . . . but regardless of their height, they will not be 'trees' within the meaning of La. R.S. 3:4278.1.").

30. *See generally Corley v. Gary*, 2014 La. App. Unpub. LEXIS 264 (La. Ct. App. 1st Cir. 2014) (applying Sec. 4278.1).

31. *See Mathews*, 82 So.3d at 486–87.

32. *Luster*, 110 So. 3d at 1105. ("[T]he Kahls' camellias were of a substantial height . . . but regardless of their height, they will not be 'trees' within the meaning of La. R.S. 3:4278.1.").

33. *Id.*

34. *Id.*

35. *Id.*

reference to nothing but the fair market value of the tree as timber, regardless of whether it was cultivated or intended as such by the owner.

The Louisiana timber trespass law arguably does a good job of what it sets out to do, and a better job than the prior common-law remedy: to deter knowing as well as careless trespass by those in the timber business. It also operates to shift the burden of being careful about boundaries onto those who would transgress them for profit. The triple damages provision is in effect a forced sale at three times market value—a better deal, by design, than the victims of trespass could get in the market. It encourages landowners to mark boundaries clearly, to deter or punish those who trample over them knowingly or under circumstances in which those trespassers should have known what they were doing. For those who value trees *as* timber, consistent enforcement of the triple damages provisions removes at least some of the incentive to trespass intentionally or carelessly and harvest the timber of another.

II. MENTAL DISTRESS DAMAGES FOR TIMBER TRESPASS

The triple damages remedy is not the exclusive remedy for timber trespass. In addition to restoration, reforestation, and aesthetic damages, damages for mental anguish are potentially recoverable under Louisiana's more general offense (tort) statute, Article 2315 of the Louisiana Civil Code.[36] Under Louisiana law, mental anguish damages are recoverable (including for timber trespass) if the plaintiff "proves a psychic trauma in the nature of or similar to physical injury, directly resulting from the property damage."[37] The rule is well-established in Louisiana that damages for mental anguish are recoverable for intentional but not good faith timber trespass.

In a series of cases from 1977 forward, Louisiana appeals courts have declined to award mental anguish damages in the absence of intentional or bad faith trespass. In the first of these cases, the court defined this type of damage to require "moral bad faith," meaning "the defendant had consciously performed some wrongful act in cutting timber on plaintiffs' lands."[38] In *Garrett v. Martin Timber Co.*, the Second Circuit Court of Appeals, citing *McGee*, held that damages for mental anguish in trespass cases were recoverable only in "situations where the defendant trespassers were found to be in moral bad faith or to have committed a willful and wanton trespass on plaintiff's property."[39] In *Morgan v. Fuller*, the Second Circuit, citing *Garrett*, held that neither triple

36. Louisiana, as a civil law state, does not use the terminology of common law tort law. Instead, it refers to "Offenses and Quasi-Offenses." Article 2315, cited here, is entitled, "Liability for acts causing damages." and states, "A. Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it." La. Article 2315.

37. *Evans*, 521 So.2d at 839, *and cases cited therein*.

38. *McGee v. SECO Timber Co.*, 350 So.2d 1265, 1269 (La. Ct. App. 3rd Cir. 1977).

39. *Garrett v. Martin Timber Co.*, 391 So.2d 928, 933 (La. Ct. App. 2nd Cir. 1980), *writ denied*, So. 2d 804 (La. 1981).

damages nor mental anguish damages were available because the trespasser acted in good faith.[40]

But in *Clifford Boswell v. Roy O. Martin Lumber Co., Inc.*, the Supreme Court of Louisiana upheld an award of mental distress damages when a lumber company grossly exceeded the scope of a timber deed and killed more than 5,000 trees on Boswell's Vernon Parish property unlawfully.[41] The timber company had permission to remove all trees with a stump diameter exceeding 8 inches (about 1,200 trees). However, they actually also killed thousands of trees with diameters of two to eight inches, denuding the property and rendering it unusable for Boswell's purposes - primarily, squirrel hunting.[42] Ultimately 99 percent of targeted trees died and some blocked a stream when they fell.[43] Boswell also testified that "the falling trees rendered walking through his property hazardous."[44] In Boswell's own words, "It was real good squirrel territory [prior to the deadening] on account of them beeches and things in there, it was a real good swamp to hunt in. About as good as we've got anywhere around."[45]

The court was unsympathetic to this claim, finding, in effect, that Boswell ran this risk when he authorized the removal of timber from his property. As they put it, Boswell "must have anticipated as early as 1962, when he first sold the timber to defendant, that his hunting activities on the property would be interrupted or affected in some way by the timber cutting which he specifically authorized."[46] The Supreme Court disagreed. To substantiate Boswell's mental anguish damages, the Supreme Court described one witness who detailed Boswell's frequent complaints about the "the injustice done him."[47] The Supreme Court reversed the Court of Appeals and reinstated the trial court's full award of damages, concluding, "The record reflects that the plaintiff was emotionally upset about the deadening . . . Undoubtedly, the plaintiff suffered considerable mental pain and anguish."[48]

A decade later, as described above, Barbara Harkness recovered mental distress damages resulting from the wrongful trimming of some pecan tree limbs.[49] The trees were on a seventy-acre family property in Morehouse Parish, Louisiana, acquired by her grandfather sixty years before.[50] Her grandfather planted the trees and left the land to her father, Vaughn Harkness, who

40. *Morgan v. Fuller*, 441 So.2d 290, 298 (La. Ct. App. 2nd Cir. 1983).

41. *Boswell v. Roy O. Martin Lumber Co.*, 363 So.2d 506, 507–8 (1978), *reversing Boswell v. Martin*, 355 So.2d 33 (La. Ct. App. 3rd Cir. 1978).

42. *Roy O. Martin Lumber Co.*, 363 So.2d at 509. This is a beloved pastime in these parts of Louisiana. *See, e.g.*, Gary McCoy, *5 Great Reasons to Take Your Kids Squirrel Hunting in Louisiana*, KISS COUNTRY 93.7 (September 27, 2022), https://mykisscountry937.com/squirrel-hunt-louisiana/.

43. *Roy O. Martin Lumber Co.*, 363 So.2d at 507–8.

44. *Id.* at 508.

45. *Id.* at 506, 508.

46. *Boswell v. Martin*, 355 So.2d 33, 38 (La. Ct. App. 3rd Cir. 1978), *reversed by Boswell v. Roy O. Martin Lumber Co.*, 363 So.2d 506, 508 (1978).

47. *Roy O. Martin Lumber Co.*, 363 So.2d at 508.

48. *Id.*

49. *Harkness*, 521 So.2d at 836.

50. *Id.* at 833.

"meticulously cared for the pecan trees during his lifetime and harvested and sold the pecans during the season."[51] Her father died in January of 1984.[52]

In August of 1984, the defendants contracted to move a house and proceeded to accomplish this task by moving the house down Ollie Grove Road which borders [her] land in Morehouse Parish."[53] They hired a tree service to remove the limbs of the pecan trees because they found them to be an "obstacle" for their move.[54] Without contacting her, they cut the limbs.[55]

In an opinion drafted by Judge Jasper Jones,[56] the Second Circuit Court of Appeals, including Jones, Chief Judge Pike Hall, and Judges Fred W. Jones, Jr.,[57] upheld the trial court's award of mental distress damages.[58] Judge Jasper Jones wrote,

The trial judge found the plaintiff entitled to an award for mental anguish, noting [her] testimony that her grandfather had planted the trees sixty years ago and her father meticulously cared for the pecan trees and sold some of the pecans produced. The trial judge further noted [that her] father passed away only eight months before the limbs were cut adding, "This caused 'particular' mental anguish to the plaintiff who obviously attached significance to the trees because of her father's feelings and care for them."[59]

III. *JOHNNY EVANS V. B.R. BEDSOLE TIMBER CONTRACTORS*, 521 SO.2D 837 (CT. APP. LA. 2ND CIR. 1988).

The events giving rise to *Johnny Evans v. B.R. Bedsole Timber Contractors* are almost contemporaneous with *Harkness v. Porter*. The facts are not in dispute. In April 1985, employees of Bedsole Wood Corp. were hired under a chipping contract to harvest timber from the Charles Smith Tract in DeSoto Parish, in northwestern Louisiana.[60]

The Smith tract is adjacent to the Evans tract but was separated by a fairly recent and plainly visible four-strand barbed wire fence. According to Jackie Bedsole, who had purchased the Smith timber for Bedsole Wood Corp., the gate in Evans's fence was wide open and two posts were already pulled out of the ground; Bedsole's crew pulled up some more posts and took some heavy equipment through the opening. They ultimately cut 2.4 acres of Evans's land.

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51. *Id.* at 834.
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.* at 834-35.
56. *Id.* at 833.
57. *Id.*
58. *Id.* at 836.
59. *Id.* at 836.
60. DeSoto Parish is located in the northwestern part of Louisiana. It is primarily a timber area. *See, e.g.*, Shaun Tanger et al., ECON, CONTRIBUTION OF FORESTRY AND FOREST PROD. ON DESOTO PARISH, LA. (LSU AgCenter Pub 3617-DES 2018).

Johnny Evans testified that his family had owned the 121.5 acre tract since a patent to his great-grandfather Noah Evans in 1878,[61] and that prior to owning the land, Noah Evans had worked it as a slave for "Old Master Evans." Mr. Evans testified that several of the larger trees in the affected area had been there since slavery days, so he had never cleared the tract and had no intention of doing so. Rather, he used the land for squirrel hunting and derived some revenue from a mineral lease on it. He testified that he was "hurt" over the loss of the trees and "upset" that someone would just go in and cut his timber without asking.[62]

The defendant admitted to the trespass, known as an "overcut."[63]The trial court found there was a highly visible four-strand barbed wire fence separating the tracts. It also found that Bedsole's crew intentionally removed and damaged the gate, entered the Evans property, and commenced cutting and removing timber."[64]

Evans received triple damages for the trespass, along with some damages for reforestation, attorneys' fees, and expert witness fees.[65] He appealed the trial court's failure to award damages for mental anguish.[66]

Before turning to the court's analysis of this claim, let us be clear about what happened here. In 1878, Noah Evans, a freed slave, became the owner of the partially-forested Louisiana land on which he himself had formerly been enslaved, by a grant from the U.S. government under the Homestead Act.[67] Obtaining title to this land, and keeping it, is an extraordinary accomplishment.[68] Yet somehow, the family held on to this land, in its mostly-unimproved condition, for more than 100 years. Noah passed it on to his son Louis[69] and his daughter-in-law Carolyn Evans, who in turn passed it to their grandson, Johnny Evans, the plaintiff here.[70] Some of the original trees from that time were still standing, until that day in April, 1985, when the employees of B.R. Bedsole Timber Contractors, hired to clear an adjacent parcel, "intentional[ly] cross[ed] a highly visible fence, cutting and removing the plaintiff's trees and reducing

61. This testimony is correct. On June 24, 1878, Noah Evans received a land patent signed by President Rutherford B. Hayes under the Homestead Act of 1862. La. Land off. Homestead Certificate No. 52 (issued June 24, 1878), available at https://glorecords.blm.gov/details/patent/default.aspx?accession=LA0800__.179&docClass=STA&sid=itn3o0ll.dme#patentDetailsTabIndex=1.

62. *Evans*, 521 So.2d at 838.

63. *Id.*

64. *Id.* at 838–39.

65. *Id.* at 840–41.

66. *Id.* at 839.

67. *See* State Volume Patent LA0800.178 (issued June 24, 1878), *supra* note 61.

68. *See, e.g.*, Laura Blokker, THE AFRICAN AMERICAN EXPERIENCE IN LOUISIANA 33 *et seq* (2012), https://www.crt.state.la.us/Assets/OCD/hp/nationalregister/historic_contexts/The_African_American_Experience_in_Louisiana.pdf.

69. Charlotte and Deborah Foshee, *World War I Draft Registration Cards*, USG WAR ARCHIVES, http://files.usgwarchives.net/la/state/military/worlwar1/draft/desoto-b.txt (last visited October 10, 2022). (listing that there is a 1917 World War I draft record for a Louis Evans of DeSoto Parish, Louisiana, born in 1896).

70. *Bedsole Timber Contractors*, 521 So.2d at 839.

them to wood chips."[71] Other than perhaps by fire, a more complete destruction of these ancient trees is not possible. As the court acknowledged, "Just as one cannot build an old fence, one cannot replant an old hardwood stand . . . Mr. Evans's land . . . is desolate and almost impassable for the debris of vines and branches left by the defendant's crew. . .as a result of the trespass."[72]

As a matter of applying the timber trespass statute and its triple damages provision, Evans' case was easy. Bedsole Timber Contractors was a "logger[] . . . deriving economic benefit from their actions,"[73] Bedsole's trespass was knowing (if not intentional), and Evans' trees had clear (although not very great) market value as timber (unlike the camellias or the single water oak).

But Johnny Evans was not awarded mental anguish damages. The court "explained" why not:

[P]laintiff contends . . . that he and his family have a great sentimental attachment for the land involved. It has been in his family since 1878 and has provided recreation in the form of hunting, as well as revenue from mineral leases. Mr. Evans visits it on a regular basis and is dismayed to see it laid barren. . . ."

Plaintiff did not prove psychic trauma as a result of this [property damage]; he did not seek treatment for any mental disorders after the incident, as did the plaintiff in *Elston, supra*[74]; he merely testified that he was "upset" and "hurt." This strikes us as nothing more than normal worry associated with having one's property damaged by another. Moreover, the evidence did not substantiate Mr. Evans's contention that several old trees from slavery days had been downed.

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71. *Id.*; The Bedsoles were repeat offenders, or at least, repeatedly accused. *See, e.g., Emmanuel Poret, Jr. v. Billy Ray Bedsole Timber Contractor, Inc.*, 729 So.2d 632 (La. Ct. App. 2nd Cir. 1999).; *Don Brown & F.M. Brown v. Billy Ray Bedsole*, 447 So.2d 1177 (La. Ct. App. 3rd Cir. 1984); *Emmanuel Poret, Jr. v. Billy Ray Bedsole Timber Contractor, Inc.*, 756 So.2d 664 (La. Ct. App. 2nd Cir. 2000). The Bedsole family had been in the timber business since at least 1925. *See, e.g., Travis H. Bedsole v. Hill, Harris & Co.*, 2 La.App. 366 (La. Ct. App. 2nd Cir.1925).

72. *Bedsole Timber Contractors*, 521 So.2d at 840.

73. *Kahl v. Luster*, 110 So. 3d 1101, 1105 (La. Ct. App. 2012).

74. *Elston v. Valley Electric Membership Corp.*, 381 So.2d 554 (La.App. 2d Cir.1980). In *Elston*, the electric company mistakenly installed the wrong electrical transformer in a remodeled home, which "caused a surge of electricity which destroyed all the electrical appliances, light fixtures, and outlets and caused some minor cosmetic damage to the interior of the home." *Id*. at 555. Although Mrs. Elston was not present at the time, these events exacerbated her nightmares, and "prompted her to consult a psychiatrist who testified that the intensification of Mrs. Elston's problem was directly related to the trauma caused by the electrical damage to her newly remodeled home. The psychiatrist explained that although the home was repaired and tested for safety, Mrs. Elston's subconscious anxiety was substantially increased by the fact that the electricity had seriously malfunctioned and threatened the security of her home. This threat to the home was particularly disturbing to Mrs. Elston because she lived in the home during her childhood and had developed a strong emotional attachment to it. He further stated that her psychological condition was serious enough to pose a real threat to her life." *Id*. at 555–56. "Mrs. Elston has clearly shown that she has suffered a psychic trauma in the nature of or similar to a physical injury, and that this trauma was a direct result of the damage to her home. The trial court's award of damages to Mrs. Elston was proper, notwithstanding that she was not physically present the moment the incident occurred." *Id*. at 556.

The defendants committed a tort for which Mr. Evans is to be compensated by the remedy of treble damages. He has not proved psychic trauma. This assignment of error lacks merit.[75]

At every turn, the opinion both minimized the magnitude and misrepresented the nature of the irremediable injury suffered by Evans and his family. Evans is not just a timber merchant who lost an "old hardwood stand,"[76] or a negligent suburban homeowner who failed to prune his overgrown camellias. He is the Black descendant and scion of a formerly enslaved Louisiana family, and the steward of their family land. His sworn, uncontroverted testimony was "that several of the larger trees in the affected area had been there since slavery days."[77] He testified further to conduct referable to that fact (his preservation of the land in its original condition and intention not to change it). Evidence of tree age is not difficult to procure.[78] Yet the opinion inexplicably found that "the evidence did not substantiate Mr. Evans's contention that several old trees from slavery days had been downed."[79]

In this opinion, we hear disturbing echoes of the law of enslavement. First, during slavery, enslaved people's testimony could not be evidence against a White person.[80] Here,

no evidence controverts Evan's testimony, and he and his family have been in continuous ownership and possession of the land since at least 1878—but the court rejected it anyway, literally weighing it as less than nothing.

The opinion also recalls the scandalous history and persistence of denying and minimizing the actual capacity of Black people to feel pain as White people do.[81] Here, the acute human suffering of the Evans family is callously and bizarrely reduced to "nothing more than normal worry."[82] Evans testified, with dignity, to his "hurt," "upset," and "dismay[] to see [the land] laid barren."[83] Concededly, he did not "seek treatment for any mental disorders after the incident," but then, neither did Barbara Harkness after her pecan tree limbs were cut, or Clifford Boswell after thousands of his trees were poisoned.

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75. *Bedsole Timber Contractors*, 521 So.2d at 839–40.

76. *Id.* at 840.

77. *Id*. at 838.

78. *Id.*

79. *Id*. at 839.

80. Although in Louisiana, enslaved people could testify against one another. *See, e.g.*, Thomas D. Morris, *Slaves and the Rules of Evidence in Criminal Trials - Symposium on the Law of Slavery: Criminal and Civil Law of Slavery*, 68 Chi.-Kent L. Rev. 1209, 1223, note 88 (1992) (citing ULRICH BONNELL PHILLIPS, THE REVISED STATUTES OF LOUISIANA 58 (John Claiborne ed., 1856); *see also* DONALD YACOVONE, TEACHING WHITE SUPREMACY: AMERICA'S DEMOCRATIC ORDEAL AND THE FORGING OF OUR NATIONAL IDENTITY 123 (Pantheon Books, 2022).

81. *See, e.g.*, Joanna Bourke, *Pain sensitivity: an unnatural history from 1800 to 1965*, 35 (3) J Med Humanit. 301-319 (Sept. 2014); K.M. Hoffman et al., *Racial bias in pain assessment and treatment recommendations, and false beliefs about biological differences between blacks and whites*, Proc Natl Acad Sci U S A (2016).

82. *Bedsole Timber Contractors*, 521 So.2d at 839.

83. *Id.*

The court recognized nothing distinctive about the loss and harm Evans suffered. Nothing distinguished the obliteration of a living piece of family history, of American history, perhaps the only tangible link to that past, from any other "incident of property damage."[84] Such incidents, the court acknowledged, are "necessarily accompanied by some degree of worry and consternation over such things as possible financial loss, settlement of insurance claims, and discomfort or inconvenience."[85] But Evans' loss cannot be shoehorned into these categories. He does not claim to have suffered "worry and consternation," and we can safely assume that his purely "financial loss" was adequately compensated by the triple damages provision. Evans wished for those trees, on his land, never to be cut down at all. This was a living, tangible link to generations of his family's past that can never be repaired or replaced.

Although Evans had an ancestral connection to the land and the trees on it, this actually jeopardized, instead of strengthened, his claim. As the court put it, "Mr. Evans filed this suit individually and as succession representative of his grandparents. Louis and Carolyn Evans. He did not establish this chain of ownership beyond his grandparents and the record does not reflect his genuine ownership interest in this tract."[86] As a result, "We initially questioned Mr. Evans's right to claim damages without some proof that he was in fact the owner of the land… but since neither the defendants nor the trial court contested his ownership, we will not consider it an issue."[87] In other words, even the trespassers themselves showed more respect for Evans' ancestral connection to the land than the court did.

Evans v. Bedsole was decided by a three-judge panel of Charles A. Marvin, Jasper E. Jones, and William Norris, who wrote the opinion.[88] Strikingly, the opinion was published *the very same day*—February 24, 1988—as *Harkness v. Porter*, and Judge Jasper Jones served on both panels.[89] In *Harkness v. Porter*, Judge Jones voted to uphold an award of mental distress damages for the anguish suffered by a granddaughter due to damage to 60-year-old pecan trees planted by her grandfather and tended by her recently-deceased father.[90] The court did not require her to seek therapy over the cut branches, and there is no evidence that she did so. Even though Barbara Harkness was not the victim of an intentional trespass or any "flagrant disregard of Ms. Harkness' property rights,"[91] her

84. *Id.*
85. *Id.*
86. *Id.* at 838 n.1.
87. *Id*. at 839.
88. *Id*. at 837.
89. It also appears he served on *Elston v. Valley Electric Membership Corp.*, 381 So.2d 554, 555 (La. Ct. App. 2nd Cir.1980). The *Elston* panel is identified only as "Price, Marvin, and Jones," and Judge Fred Jones, Jr. was not elected until 1980, after which time Jasper E. Jones and Fred Jones are distinguished in published Second Circuit Court of Appeals opinions.
90. *Harkness*, 521 So.2d at 836.
91. *Id.*

mental anguish was legally recognized, when Evans' was not.[92] Clifford Boswell testified that he lost "real good squirrel territory on account of them beeches and things in there, it was a real good swamp to hunt in. About as good as we've got anywhere around."[93] He "frequently complained about" the "injustice" of its loss to a friend (not a psychiatrist),[94] and the Supreme Court found he "*[u]ndoubtedly* . . . suffered considerable mental pain and anguish."[95] Yet what Bedsole did to the Evans property—including, incidentally, its loss to Evans as a squirrel-hunting ground—did not register the same way with the court.

As a Black man and the descendant of enslaved people, Johnny Evans in effect enjoyed only some but not all the rights other property owners in Louisiana have against aggressive and careless timber cutters. An injured property owner can recover mental anguish damages only if their psychic trauma is the type the court can recognize, and that in turn requires the plaintiff's full humanity be something the court can see. Despite the *Evans* case including factors that resulted in mental anguish damages in other cases—familial connection (*Harkness*), loss of hunting grounds *(Boswell*), and intentional trespass—somehow, they do not add up for this Black plaintiff.

Race, class, and perhaps gender come together to help explain why Barbara Harkness and Clifford Boswell (and the sleepless Mrs. Elston) recovered damages for mental anguish, but Johnny Evans did not. Though no court is explicit about the race of these plaintiffs, the circumstances of the cases strongly suggest all but Evans were White. It matters to the court in assessing Harkness's anguish that the pecan trees damaged (not killed) by the tree-trimmers had been planted by her grandfather; yet Johnny Evans' direct line of descent from his great-grandfather Noah Evans, formerly enslaved on the property, seems not to matter at all. Clifford Boswell's homely vernacular plaint about the loss of his favorite squirrel-hunting grounds touched the court's heart, but Evans' similar loss did not. The court described only the land, but not its owner, as "desolate…as a result of the trespass."[96] As *Evans v. Bedsole* makes clear, laws providing for timber trespass and mental anguish damages cannot redress injuries like Evans' before a court that imposes *ad hoc* requirements about the performance of psychic trauma and fails to recognize the full humanity of all the plaintiffs before it, including the descendants of the enslaved.

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92. *Id.* A later case, also with a female plaintiff, also decoupled the triple damages provision from mental distress damages. In *Pamela Olsen v. Leonard Johnson*, 746 So.2d 740, 742 (La. Ct. App. 3rd Cir. 1999), the court applied the timber trespass statute to a case in which trees were unlawfully cut down on a small (.22 acre) part of a large (3.66 acre) suburban lot. The court agreed with Pamela Olsen that because of the defendant's actions, "The damaged area is ugly. It will be many years before the property is in a condition similar to what it was before the trees were cut." *Id*. at 745. "Ms. Olsen testified that she was very upset after speaking with Mr. Johnson because he admitted cutting the trees but did not offer to clean up the debris left on the property." *Id*. Triple damages were not awarded because the plaintiff failed to prove the fair market value of the trees, but an award of damages for mental distress was upheld. *Id*.

93. *Boswell*, Inc., 363 So.2d at 508.

94. *Id.*

95. *Id.* (emphasis added).

96. *Evans*, 521 So.2d at 840.