

will frequently provide full compensation for the injury suffered, the statute does not command this result. The proper basis for computing the penalty is the value of the tree. See *Beede v. Lamprey*, 64 N.H. 510, 15 A. 133 (1888); *Wallace v. Goodall*, 18 N.H. 439 (1846); C. McCormick, *Damages* 491 *et seq.* (1935); Annot., 69 A.L.R.2d 1335 (1960). Because the trial court used the replacement cost in assessing treble damages under this punitive statute, there must be a new trial on this issue.

Where a tree is valuable principally as a marketable commodity, the penalty provided by RSA 539:1 fully compensates the plaintiff for its loss. But where a tree confers other benefits on the plaintiff in the enjoyment of his property, he may join a count for compensatory damages with his count to recover the statutory penalty. *Morley v. Clairmont*, 110 N.H. 12, 259 A.2d 136 (1969). The ordinary measure of damages in these circumstances is the difference between the value of the land before the harm and the value after the harm. Restatement (Second) of Torts § 929 (Tentative Draft No. 19 (1973)). In this case the plaintiff introduced evidence of special circumstances which might justify the award of the replacement cost of an eighteen-inch maple. *Moulton v. Grove-ton Papers Co.*, 114 N.H. 505, 512-13, 323 A.2d 906, 911 (1974). The plaintiff may amend his declaration to include a claim for the replacement cost less the basic value of the tree used in computing the statutory penalty.

*Defendant's exceptions sustained in part
and overruled in part; remanded.*

Hillsborough
No. 7310

KATHERINE NAVONIS v. VINCENT W. NAVONIS

August 31, 1976

George J. Basbanes, by brief and orally, for the plaintiff.

KENISON, C.J. In 1972 the plaintiff and the defendant were divorced by the decree of a Massachusetts court which made no order for support of the plaintiff or the parties' minor child. In this action the plaintiff seeks a support order which will be satisfied from certain real property in New Hampshire which the parties jointly own. Since 1971 the plaintiff has paid the taxes on and has maintained the property. The plaintiff has resided in Massachusetts throughout the relevant period. The defendant's last known address is in Massachusetts, and his present whereabouts are unknown. The Superior Court (*Bois, J.*) denied the plaintiff's petition "for want of jurisdiction" and reserved and transferred the plaintiff's exceptions.

RSA 458:19-a provides: "The superior court shall have a jurisdiction to make such orders or temporary orders of alimony to a divorced wife or of support to the children of divorced parents as justice shall require in cases where the decree of divorce was not granted in this jurisdiction, even though said divorce decree makes provision for alimony and support, provided the wife and the children are domiciled in this jurisdiction and the husband is served with process in this jurisdiction."

The United States Constitution permits a State to award support when property of the defendant can be reached in the State even though the defendant cannot be served there. *Pennington v. Fourth Nat'l Bank*, 243 U.S. 269 (1917); Annot., *Jurisdiction on Constructive or Substituted Service, in Divorce or Alimony Action, to Reach Property Within State*, 10 A.L.R.3d 212 (1966); H. Clark, Jr., *Domestic Relations* 314 (1968). However, RSA 458:19-a prescribes a narrower jurisdiction. The superior court does not have jurisdiction over the plaintiff's claim under this statute, because neither the plaintiff nor the child is a New Hampshire domiciliary.

Nothing in this opinion precludes the plaintiff from bringing a bill in equity for partition of the property. *Hale v. Jaques*, 69 N.H. 411, 43 A. 121 (1898). See also RSA ch. 538 and 491:7 (Supp.

[REDACTED]

1975). The plaintiff may seek in that proceeding a comprehensive adjudication of the parties' rights in the property. *Owen v. Stewart*, 111 N.H. 350, 283 A.2d 492 (1971).

Plaintiff's exceptions overruled.

All concurred.

[REDACTED]

Belknap
No. 7322

TOWN OF GILMANTON v. NORMAN CHAMPAGNE

August 31, 1976

[REDACTED]

Richard P. Brouillard and Charles H. Bradley III (Mr. Brouillard orally) for the plaintiff.

New Hampshire Legal Assistance, George C. Bruno and Robert D. Gross (Mr. Bruno orally) for the defendant.

PER CURIAM. The Superior Court (*Loughlin, J.*) denied the defendant's motion to strike off his default to a petition by the town of Gilmanton for an injunction to compel the defendant to