

in lumbering operations, knew the mark, and a fair inference is that the men employed by Whalen knew that part of this piling was marked as I have stated.

The plaintiff did nothing more until in March, 1913, when he took men to break roads preparatory to getting the piling out, but a snow storm came on, and plaintiff and his men desisted. Later on plaintiff was again on the ground, but no steps were taken to get out piling from the bush or to pay for or remove the 91 pieces. Later on and in 1913, piling was badly wanted by the defendant Whalen to assist in filling his contract with Burrill Company, and Whalen by his agent Dolan, endeavoured to make a contract with the plaintiff for the delivery of piling, but they could not agree upon terms. Whalen ascertained that piling, was upon Niemi's land and he, Whalen, supplied his agent Gardiner with \$100 in money and sent him to Niemi to close a bargain. Gardiner did not conclude a bargain, but Niemi was induced to go to Whalen's office where a bargain was made by Whalen for the piling, and it was taken away and turned in to Burrill & Co. The agreement of sale by Niemi to Whalen's firm or company was made on the 28th August, 1913. In September, the plaintiff's solicitor wrote to Whalen and also to Burrill & Co. demanding the money. Burrill & Co. paid the money into Court. The defendant Whalen fights, and upon his application an order was made by the local Judge on the 14th November, 1913, bringing in Nicolas Niemi as a third party.

The questions submitted to the jury, and the answers were:—

(1) Did the defendant Whalen before the purchase by him from Niemi have notice of the agreement between McGregor, and Niemi? A. Yes.

(2) Did the plaintiff McGregor leave the piling beyond what was a reasonable time for taking it away under the contract? A. Yes.

In the view I now take of the case it was not necessary that I should find, or set out all of my findings upon the facts, but they are for the Court, should the case go further. The alleged contract is unilateral. It is a document addressed "To whom it may concern," signed by Niemi, which states that he agrees to sell to McGregor, the plaintiff. McGregor has not signed. It is objected by counsel for Niemi