

that is with the lumber you had burned. Not hearing from you, I will draw on you for the above amount."

The contract provides that lumber is to be paid for in 30 days from shipment, and defendant loaded the lumber on the cars at Bracebridge and said he regarded it as part of the contract to do so; when loaded on the cars he drew against the shipments. There was no intimation to plaintiff that the lumber had been cut or was then in the yard, nor is there in the correspondence put in at the trial any notification that the lumber had been destroyed until the letter of 12th June, 1903, when defendant said he intended drawing for "a balance coming to me of \$157.80, that is with the lumber you had burned."

As the usual course was for defendant to place on the cars the lumber appropriated to the contract with plaintiff, and then draw against it, I think there was no "unconditional appropriation," of the particular lumber the price of which is now claimed, until placed on the cars.

There will be judgment for plaintiff on his claim for \$904.50 with costs, and judgment dismissing defendant's counterclaim with costs.

JULY 13TH, 1904.

DIVISIONAL COURT.

CHRISTIE v. COOLEY.

Deed—Construction—Temporary Grant of Strip of Land—Erection of Building—Destruction or Damage by Fire—“Shall Remain Standing”—Rebuilding or Repair.

Appeal by defendant from judgment of County Court of Hastings in favour of plaintiff in an action to recover possession of a strip of land 4 feet wide, part of lot 5 on the easterly side of Water street, in the town of Trenton.

The right of plaintiff to possession depended on the meaning and effect to be given to an instrument dated 15th January, 1883, made between one Gordon, then the owner of the whole of lot 5, and plaintiff.

At the time the instrument was executed, there was in course of erection on the lot, which had a frontage of 66 feet on Water street, a three-storey brick building, divided into 3 stores, each of the same width.

The northerly part of the lot had been purchased by plaintiff from Gordon. The southerly part was retained by Gordon, and the buildings on it, and so much of the part sold to plaintiff as was covered by the middle store, were intended to be used as an hotel.