

contract providing for part payment in advance on certain conditions, as if it controlled the whole contract.

The contract is clear enough that the bolts were to be delivered in the water on the loader provided in the vessel sent to transport the wood, and only what were so delivered were to be paid for. The plaintiff was notified that the bolts were in the water and were going down to the place of delivery towards the end of April, and took no steps to have any vessel there to accept them. The time of delivery contemplated by the contract was as soon after the 1st May as the ice was out of the river. The channel was open and free from ice before the 21st April, but the plaintiff for some reason neglected the notice of the expected arrival of the wood, and took no steps to ascertain the state of navigation. The breach of contract was not on the part of the defendant, as the Judge has found, but on the part of the plaintiff. The defendant had the quantity of bolts ready to be shipped at a proper place, and the plaintiffs made default in providing means for their transportation according to the contract.

The action, therefore, fails, and it remains to consider the defendant's claim for damages in respect of the plaintiff's default. I think he places his loss at too high a figure, and it is not very satisfactory to read his evidence and contrast that with the details of loss as claimed in the pleadings.

I would allow cost of saving the logs by drawing out of the water at Root river .....	\$193
And at Echo lake .....	197
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	\$390
The claim of 20 cords in paragraph 11 of pleading	\$ 65
Loss of 75 cords by icebergs, after the first week in May .....	244
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	\$699
Deducting \$500 received .....	\$500
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Leaves balance of .....	\$199

The action should be dismissed with costs and judgment on counterclaim for defendant for \$199 and costs. The defendant should also have costs of appeal.

HON. MR. JUSTICE LATCHFORD and HON. MR. JUSTICE MIDDLETON, agreed.