

given by defendants—were present, and so far as is known, gave evidence at the trial.

I am of opinion that there was reasonable excuse for the want of notice of injury, and that the defendants have not thereby been prejudiced in their defence.

Upon the answers by the jury to the questions submitted, and upon my findings there should be judgment for the plaintiff for \$1,500 with costs.

Thirty days' stay.

DIVISIONAL COURT.

OCTOBER 24TH, 1912.

KEENAN v. FOSTER.

4 O. W. N. 168.

Timber Bolts—Contract for Getting Out—Construction of Contract—Breach—Counterclaim—Damages.

Action to recover \$500 paid by plaintiffs to defendants for the getting out of timber bolts under a contract, or for \$500 damages for breach of the contract. Defendants counterclaimed for breach of contract.

Co.C.J. of Grey Co., gave judgment for plaintiff for \$500 and costs and dismissed defendants' counterclaim with costs.

DIVISIONAL COURT *held*, plaintiffs in default under contract in that they were not ready to receive the timber bolts when brought out by defendants.

Appeal allowed and action dismissed with costs. Judgment for defendant upon counterclaim for \$199 and costs.

An appeal by the defendant from a judgment of the Judge of Grey County.

The appeal to Divisional Court was heard by HON. SIR JOHN BOYD, C., HON. MR. JUSTICE LATCHFORD, and HON. MR. JUSTICE MIDDLETON.

W. M. Douglass, K.C., for the defendant appellant.

W. S. Middleboro, K.C., for the plaintiffs, respondents.

HON. SIR JOHN BOYD, C.:—This case appears to have been decided as it was by importing into the contract an alleged condition that poplar logs or bolts should be dried upon the bank for a period varying from one to three months before it should be put into water for flotation to the place of delivery; and also by reading a subsidiary part of the