

cause or excuse for not loading the wood upon the cars as contracted for by him; and the learned Judge found that 40 cents was a reasonable price for such loading, and that the defendant was entitled to have deducted from the contract price 40 cents per cord. The plaintiff was, therefore, entitled to \$1,990.45. He admitted the receipt of \$2,327.38, which would leave a balance due the defendant on this account of \$336.83.—The second branch of the case had reference to the taking out of certain timber by the plaintiff for the defendant from the defendant's land, the contract in regard to which was by no means clear, made up, as it was, of certain correspondence and conversations between the parties. The difficulty arose, the learned Judge said, from the fault of both parties. The defendant did not appear to have known, or, if he did know, he did not state with reasonable definiteness, what was the quality and kind of wood which should be delivered; and the plaintiff did not deliver timber of the quality called for by the contract. The defendant received \$100.63 for the timber; deducting this from the \$336.83 due to the defendant upon the first contract, there was a balance in favour of the plaintiff of \$218.80; deducting this from \$455, the amount due to the plaintiff upon the second contract, there was a balance in favour of the plaintiff of \$218.80; but he was not entitled to recover that sum—the defendant had suffered a loss at least equal to it by reason of the timber delivered being inferior in quality to that agreed upon, and unfit for the purpose for which the plaintiff knew it was to be used. The action should be dismissed, but, having regard to all the circumstances, without costs. A. R. Hassard and W. L. Haight, for the plaintiff. M. B. Tudhope, for the defendant.