

KELLY, J., in a written judgment, said that the appellate Court had directed that the damages should be measured by the difference between what the hay was actually worth when it arrived in Brantford and what it would have been worth at that time had it been in the state in which it should have been.

In the presentation of the case at the former trial so little attention was paid to the manner of arriving at the quantum of damages that the assumption that serious objection was not taken to the amount claimed, if liability were established, was not unreasonable.

The question now to be determined was the amount of damages on the principle laid down and directed by the Divisional Court.

The evidence which had been submitted to that end was extremely unsatisfactory and much of it indefinite.

On any and every test applicable to the whole evidence, the conclusion that the learned Judge had come to was, that the plaintiff's damages, measured on the principle above laid down, amounted to \$1,115, which included also damages representing any interest to which the plaintiff was legally entitled.

There should be judgment for the plaintiff for that amount, with costs from and after the judgment of the Divisional Court.

PIGEON RIVER LUMBER CO. v. PULPWOOD CO. AND RUSSELL
TIMBER CO.—LENNOX, J.—OCT. 9.

Water—Floatable Stream—Obstruction by Logs of two Timber Companies—Preventing Use of Stream by another Company—Right of Action—Remedy by Arbitration—Saw Logs Driving Act, R.S.O. 1914 ch. 131, sec. 16—Damages.]—Action to recover damages for the obstruction of the Black Sturgeon river, a floatable tributary of Lake Superior, and for preventing the plaintiffs from floating pulpwood and other timber thereon. The action was tried without a jury at Port Arthur. LENNOX, J., in a written judgment, said that the Court had jurisdiction to entertain the action, notwithstanding the Saw Logs Driving Act, R.S.O. 1914 ch. 131, sec. 16. On the 28th April, 1919, the plaintiffs notified the defendants of their need and desire to use this waterway during the spring freshets, and requested the defendants to discontinue the use of the mouth of this river as a storage basin for their pulpwood, ties, and lumber, and permit the plaintiffs to have access to Lake Superior. The defendants undertook to accede to the plaintiffs' request, and probably at the time intended to act reasonably, but in the end applied themselves to the removal of other pulpwood, and, owing to this and other causes, all going to a consideration of