of the way it is put by Mr. Argue as against the hard and fast promise to make a first class road spoken of by plaintiffs. Defendants required to have access to their logs lying farther back, and it would be to their interest to construct as good a road as was reasonably possible, to do their own hauling, and they were willing it should be used by the jobbers. This is all that is meant in the written contract in saying "also that our roads may be used." That would import that there should be roads reasonably fit for use, and it is distinctly to add to this term of the contract, if by oral evidence we enhance the obligation or permission so that "first class roads" must be constructed.

Apart from the difficulty of sufficient evidence, I think an insuperable difficulty is raised by the law based on many well-established authorities binding upon this Court. The leading case in our Courts is perhaps Mason v. Scott, 22 Gr. 592. To give effect to this disputed testimony would, to use the words of Moss, J.A., be to "alter, vary, or contradict a written instrument which has been made the appropriate memorial of the whole agreement between the parties:" p. 626. The appeal should be allowed and the action and counterclaim dismissed; but it is not a case for costs.

MABEE, J., gave reasons in writing for the same conclusion.

STREET, J., agreed in the result.

MAGEE, J. FEBRUARY 16TH, 1906.

TRIAL.

DINGMAN v. JARVIS.

Vendor and Purchaser — Contract for Option to Purchase Land — Registration — Failure to Exercise Option — Refusal to Execute Release—Action—Costs.

Action by vendor for a declaration that a contract for the sale of land to defendant was at an end by reason of defendant's default, etc.