

lant elects to pay this amount and to take back the horse; and, if he so elects, the horse is to be given back to him upon request; and, if the parties are unable to agree as to the amount to be allowed for his keep, there will be a reference to ascertain it. In case of a reference, further directions and the costs of the reference will be reserved to be dealt with by a Judge of the High Court Division in Chambers. In *Caswell v. Coare*, where the purchase-price was recovered, it was directed that the horse should be redelivered to the defendant.

As success upon the appeal is divided, there will be no costs of it to either party.

FEBRUARY 1ST, 1915.

*CARTER v. HICKS.

Summary Judgment—Action for Money Demand — Specially Endorsed Writ of Summons—Affidavit of Defendant—Insufficiency—Rule 56—Appeal from Judgment of District Court—Time—County Courts Act, sec. 44—Extension—Indulgence.

Appeal by the defendant from an order for summary judgment made by the Judge of the District Court of the District of Temiskaming in an action in that Court for the price of pulpwood sold and delivered by the plaintiff to the defendant.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

G. H. Sedgewick, for the appellant.

H. D. Gamble, K.C., for the plaintiff, respondent.

The judgment of the Court was delivered by MEREDITH, C.J.O.:— . . . The appeal is supported upon the proposition that the appellant had filed the affidavit required by Rule 56, and that, he having done so, the order should not have been made.

The affidavit is not, in my opinion, a sufficient affidavit within the meaning of the Rule. In it the appellant deposes that he has "a good defence on its merits" to the action; that the quality of the pulpwood supplied to him for which the respondent claims

*To be reported in the Ontario Law Reports.