

The agents who acted in the matter for the respective parties agree in saying that clause 5 was inserted by the solicitor who prepared the agreement without specific instructions from them, and that, owing to the extreme shortness of the driving season, the portion of it relating to notice of default, etc., was altogether unworkable.

Defendants completed their part of the contract, and as to that nothing arises. Plaintiffs admittedly left a large proportion of defendants' logs on the shores of the Jean Baptiste and the Blanche. It is said that it was not reasonably possible to get these logs down, and that plaintiffs, under clause 5 of the agreement, and even apart from it, are thereby excused. In the view I take, it is unnecessary to consider whether or not the kind of impossibility sought to be set up would excuse plaintiffs. I find on the evidence that plaintiffs' agents did not make proper effort to get the logs out, and it must therefore be presumed that, had they done so, they would have succeeded in bringing down all the logs. The evidence is too voluminous to permit of its being referred to in detail. I may, however, mention two or three points. Notwithstanding clause 3 of the contract, practically no attempt was made by plaintiffs' men to dump or assist in dumping defendants' logs on the banks of the Jean Baptiste. The foreman did not even know that such a duty was cast on him. It is said that what was known as the McNaughton dump was in very bad shape for handling, but plaintiffs' men did not even try. Again, the plaintiffs' agent was not justified in closing operations on the Jean Baptiste on 16th May, and discharging those of his men not required for the sweeping of the Blanche. He should have waited (as defendants' agent did on the Wabis) for the rain that was almost sure to come, and that did in fact come a few days later. Then, as regards the sweep of the Blanche, it was not impossible, but at the most only difficult, to roll the remaining logs into the water after the jam had been cleared away. There was plenty of water in the river all summer, and if the banks were too muddy to work on to advantage immediately after the water fell, the men could have been sent back to do the work later in the season. The plaintiffs are therefore liable for the damages occasioned by the failure to get the remainder of the logs out, and the only remaining question is as to the measure of damages. As regards the timber other than that in the McNaughton and the Stall-