

but to the purpose to which it was intended to be put—there would have been no action by the council at the stage to which the building had advanced in June, 1919, and the defendant would in all probability have gone on without molestation to complete the building, at his own risk in producing a structure which, when completed, would be in compliance with the approved specifications. Subject to that risk, he is now entitled to proceed with the building, leaving it to the plaintiffs to take such action as they are entitled to take if the specifications are found not to have been complied with.

Action dismissed with costs.

ROSE, J.

DECEMBER 31ST, 1920.

FRASER v. BEAVER BOARD TIMBER CO. LIMITED.

Contract—Cutting and Hauling Timber—Lots Specified in Contract—Implied Contract for Undisturbed Possession of Lots Specified—Contractor Prevented from Cutting on Some of the Lots—Right to Cut on Others and Retain Claim for Damages for Prevention—Waiver—Evidence—Counterclaim—Failure to Cut on all Lots where Cutting Permissible—Damages—Assessment of—Reference—Costs.

Action for damages for loss suffered by the plaintiff in being prevented from performing a contract made with the defendants, and counterclaim by the defendants for damages for the plaintiff's failure to complete the work under the contract.

The action and counterclaim were tried without a jury at Haileybury.

W. A. Gordon, for the plaintiff.

Everard Bristol, for the defendants.

ROSE, J., in a written judgment, said that by the contract, which was in writing and dated the 21st October, 1918, the plaintiff agreed to cut, skid, haul, and deliver on Long Lake, during the season of 1918-19, approximately 7,000 cords, of 128 cubic ft. each, of pulpwood, from 20 named lots in the townships of Sharpe and Savard; and the defendants agreed to pay \$6.50 for each cord cut in Sharpe and \$7 for each cord cut in Savard. The plaintiff was to cut all necessary main roads; and the defendants were to erect and allow the plaintiff to use a complete set of logging camps.