JANUARY 16TH, 1905.

DIVISIONAL COURT.

DELAPLANTE v. TENNANT.

Contract—Sale of Goods to be Manufactured—Breach—Construction of Contract—Implied Condition—Expectancy—Consideration—Property Passing—Destruction by Fire—Appropriation of Goods to Contract.

Appeal by defendant from judgment of MACMAHON, J., 4 O. W. R. 76, in favour of plaintiff on his claim for the recovery of $904.50 with costs, and dismissing defendant's counterclaim with costs. The action was for damages for breach of a contract by defendant for the getting out and delivery to plaintiff of a quantity of hemlock at a price agreed upon. The counterclaim was for the price of certain lumber.

The appeal was heard by BOYD, C., MEREDITH, J., MAGEE, J.

R. U. McPherson, for defendant.

W. E. Middleton, for plaintiff.

BOYD, C.—The surrounding facts in the evidence shew this condition of affairs as to the matter in dispute: defendant had a quantity of logs at a switch 6 miles north of Huntsville and 20 miles from Bracebridge, where plaintiff had his saw-mill. The logs were estimated to yield from 400,000 to 600,000 feet; the actual yield was a little over 400,000. It was known to plaintiff that defendant had no saw-mill at the switch, and that his intention was to make arrangements to have the lumber cut at the switch by getting a man to move in with a portable mill and do the work. Arrangements had been made in part for the purpose, but the man relied upon to come from Whitney refused. . . . and so it became practically impossible for defendant to have the cut made during the sawing season. He then sold the logs at the switch for some $1,800, an amount which was about $1,000 less than would have been derived from the sale as lumber to plaintiff. . . .

Plaintiff's right to recover . . . rests upon the proper construction of the two letters dated 11th and 15th April, 1902 (set out in 4 O. W. R. at p. 76.)

The broad general principle to be extracted from the decisions, according to Collins, M.R., is, that "when the con-