

attend again at his own expense and make answers to these questions. Costs of the motion to the plaintiff in any event. T. N. Phelan, for the plaintiff. J. A. Macintosh, for the defendant.

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TREMBLAY V. PIGEON RIVER LUMBER CO.—MIDDLETON, J.—  
MARCH 19.

*Contract—Sorting of Timber—Expense of—Apportionment—Evidence—Damages—Costs—Reference—Report—Appeal—Scale of Costs.*—An appeal by the defendants and a cross-appeal by the plaintiff from the report of the Local Master at Port Arthur; and a motion by the plaintiff for judgment on further directions and costs. The plaintiff's claim in the action and the defendants' counterclaim arose out of an agreement between them, which was not in writing. All the claims were referred to the Master for inquiry and report. The defendants were the owners of logs and pulpwood with which certain ties were mixed. The plaintiff was to sort and load the ties; and he agreed with the defendants that the ties should be sorted at their sorting jack in the Kam river, and that the expense of sorting should be borne in proportion to the quantity of timber sorted. The Master found that the expense should be shared equally; and upon the argument it was practically conceded that this finding could not be interfered with. Shortly after the making of the agreement, a freshet swept the mingled mass down the river, and carried away the booms of the sorting jack. This jack was afterwards replaced, and all the timber that then remained above it passed through it, and was sorted. The timber below was saved and boomed near the loading jack. The plaintiff sorted out of this the ties for which he was responsible, leaving the logs and pulpwood mixed. The Master disallowed the plaintiff's claim for remuneration for this; and properly so, in the opinion of the learned Judge. Each party made claim against the other for damages for delay; but neither claim was, in the opinion of the learned Judge, sufficiently supported by the evidence. The remaining question was the apportionment of the cost of the operation of the sorting jack. Both parties appealed as to the amount allowed to the plaintiff upon this head. Upon the evidence, the learned Judge found that the amount allowed to the plaintiff by the Master should be increased to \$712.13, and the plaintiff's appeal allowed to that extent. The defendants' appeal should be dismissed. The learned Judge