

The judgment of the Court (ANGLIN, MAGEE, MABEE, JJ.), was delivered by

ANGLIN, J.:— . . . The record bears the following indorsement: "The parties hereto consenting, it is ordered that all the questions in this action be tried by James R. Cotter, Esquire, deputy registrar and Master of this Court at Barrie, sitting as and for the trial Judge, with all the powers of such Judge."

The local Master, who is not one of His Majesty's counsel, is not a person whom a Judge of the Supreme Court of Judicature might, under sec. 87 of the Ontario Judicature Act, request to preside over a sitting or adjourned sitting for the trial of causes. There is no other power under which the Master could be appointed to discharge the functions of a trial Judge, and if the proceedings before him are not to be deemed *coram non judice*, they must be regarded as taken under a reference made pursuant to sec. 29 of the Arbitration Act. That such was the power which the Judge who presided at the Barrie sittings intended to exercise in referring this action at the request of both parties to Mr. Cotter for trial, there can be no doubt, and the presence, or the significance, of the words "sitting as and for the trial Judge," in the indorsement drawn up by counsel, must have escaped his attention.

However, upon the appeal before us, taken on the assumption that the findings of the Master should be treated as a judgment after trial, appealable to a Divisional Court, counsel for both parties agreed that the reference should be treated as having proceeded under sec. 29 of the Arbitration Act, and that in lieu of defendants appealing to and plaintiffs moving for judgment before a Judge in the Weekly Court, the Divisional Court might hear and deal with the matter as arbitrators, and give final judgment, by which both parties agreed to abide. It is in this capacity that we entertain the appeal, at the express request of counsel for both parties.

Plaintiffs' claim was for the value of a quantity of lumber which defendants had refused to accept from plaintiffs, upon the ground that it did not answer the description of the lumber which defendants had agreed to purchase. Defendants had inspected the entire "cut" of lumber made by plaintiffs, and offered by them in fulfilment of their con-