

SUIT FOR DELIVERY OF POLES.

Judgment was given at Toronto, on December 10th, in the case of Phelps V. McLachlin, an action tried at Ottawa without a jury. The action was brought for damages for non-delivery of poles under a written contract under which, as the plaintiff contended he could not be called upon to pay until the poles had been first inspected and passed by both parties and the defendants had supplied the cars and shipped the poles. The defendants contended that if the poles had been on the ground for 30 days and an estimate was made after the 30 days had elapsed the plaintiff was obliged to make immediate payment, otherwise they (defendants) were not called upon to deliver. Held, that both parties were wrong in their interpretation of the contract on these points, but that the plaintiff was justified in treating the defendant's letter to him of August 2, in which they refused to load the poles until payment, as a breach of contract to deliver and in rescinding the

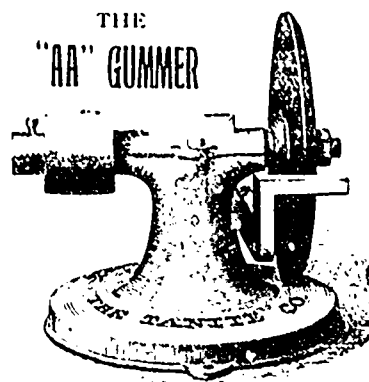
contract. Reference was made to the master at Ottawa to assess the damages the plaintiff had sustained from the non-delivery of such poles as defendants had on hand under the estimate (20,000), referred to in the contract and which would pass inspection.

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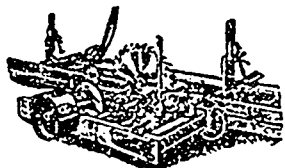
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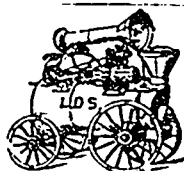
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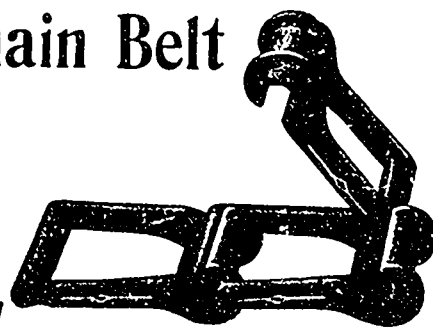
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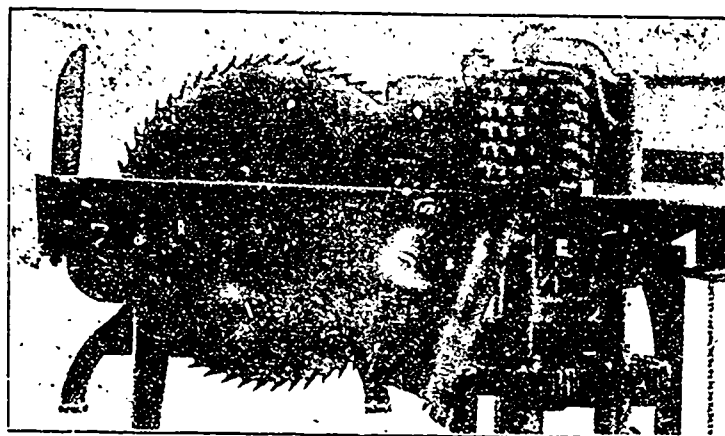
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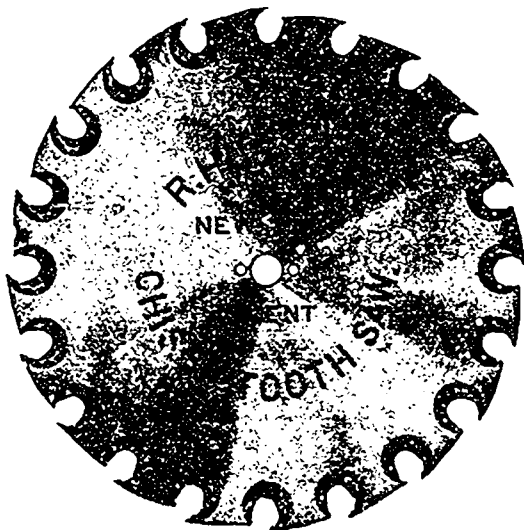
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