35 U. C. R. 73, and Lucas v. Township of Moore, 3 A. R. 602, 606, the Judge might well conclude that the road was in a state of repair reasonably safe and sufficient for the local requirements of the neighbourhood.

The judgment should, in every aspect of the case, be affirmed with costs.

---

FEBRUARY 15TH, 1906.

DIVISIONAL COURT.

## CHAREST AND BRUNET v. CHEW.

*Contract—Getting out Logs—Permission to Use Roads—Failure to Furnish Good Road — Oral Representations — Evidence of—Admissibility—Conflict.*

Appeal by defendants from judgment of FALCONBRIDGE, C.J., in favour of plaintiffs in an action for damages for breach of a contract. Plaintiffs and defendants on 14th September, 1903, entered into a contract whereby plaintiffs were to get out a large quantity of logs for defendants, delivering them at Vermillion River. This contract contained the following clause: "Also that our (defendants') roads may be used by said contractors (plaintiffs), providing they use the same width of sleighs." The road referred to in this clause was about 3½ miles in length, and the condition of the road and the right to use it were important factors in the price plaintiffs were doing the work for. Before the contract was made, defendants' agent (as stated by plaintiffs) pointed out to plaintiffs where this road would be located, and represented that it would be a first class iced road. The trial Judge admitted this evidence subject to objection, found defendants had not furnished a road of that kind, and directed a reference to assess the damages plaintiffs had sustained by reason of not being able to get the timber out.

The main question upon the appeal was whether plaintiffs could give evidence of the oral statements as to the character of defendants' roads which plaintiffs were obtaining permission to use.

The appeal was heard by BOYD, C., STREET, J., MABEE, J.