

tions carried on by the parties on some of the streams tributary to Lake Temiskaming. The matters at issue fell under three heads: one forming the subject of the disputed portion of the claim, and the other two of the counterclaim. A portion of the claim was not disputed.

J. F. Orde, Ottawa, and M. G. Powell, Ottawa, for plaintiffs.

G. F. Henderson, Ottawa, for defendants.

THE LOCAL MASTER:—In the autumn of 1903 a verbal agreement was entered into between the local agents of plaintiffs and defendants, and of Mr. J. R. Booth, whereby plaintiffs and Booth were to clean out one-half each of a stream known as the Jean Baptiste creek, charging up a proportionate part of the cost to defendants. The Jean Baptiste creek was entirely in a state of nature, no lumbering operations having theretofore been carried on upon it. The evidence is that in such a case a great deal of preliminary work in the way of cleaning out brush and fallen trees, cutting away over-hanging limbs, etc., is necessary before driving operations can be successfully carried on. It was this class of work that the agreement contemplated. A portion of it was done in the autumn, and as to the charge for that no dispute arises. The cold weather, however, came on before the work was completed, and the remainder of it was done in the spring. For the cost of this latter portion defendants dispute their liability. I find on the evidence that, while doubtless all parties assumed that the work would all be done in the autumn, the agreement was in no way contingent on that. I find further that a large part of the work done by plaintiffs in the spring was primary cleaning out, such as defendants had agreed to share the cost of. This must be evident from the undisputed fact that over a considerable portion of the creek no work whatever was done in the autumn. The evidence is that even in the case of streams that have previously been driven, a certain amount of cleaning out is necessary each spring, and for this class of work defendants are not, of course, liable. The evidence is, however, that allowance, and I think I must find sufficient allowance, has been made for this by plaintiffs in arriving at the amount claimed. I therefore allow plaintiffs' claim at \$706.04, the full amount claimed.