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TORONTO, MARCH 29, 1911.

No. 27.

COURT OF APPEAL.

MOSS, C.J.O., IN CHAMBERS.

MARCH 17TH, 1911.

MARTIN v. BECK MANUFACTURING CO.

Appeal—Leave to Appeal to Court of Appeal from Order of Divisional Court Affirming Judgment at Trial—Questions of Fact—Contract—Amount in Controversy—Absence of Special Circumstances—Refusal of Leave.

Motion on behalf of the defendants for leave to appeal from the order of a Divisional Court, ante 680, affirming, with a slight variation, the judgment pronounced by LATCHFORD, J., ante 219, after trial without a jury.

F. E. Hodgins, K.C., for the defendants.
D. C. Ross, for the plaintiff.

Moss, C.J.O.:—The grounds urged in support of the application are that the Courts below placed a wrong construction upon a provision in the contract between the parties with regard to the measurement or scaling of the logs and timber to be cut, taken out, and delivered by the plaintiff at the defendants' booms in Penetanguishene; that upon the question of the quantity of culls the finding of fact upon the evidence should have been in favour of the defendants; and that the matter in controversy is a sum nearly sufficient to entitle the defendants to appeal as of right.

I have read the proceedings at the trial, the contract in question, and the judgments complained of. I am not at all convinced that any serious mistake was made in the conclusions of fact arrived at. And I say this without imputing or intending to impute in any respect want of veracity on the part of any of the witnesses.

In any view, it would require a very strong case of apparent error in the findings of fact to justify granting leave to appeal on that ground.