

BIGRAS v. O'CONNOR—SUTHERLAND, J.—OCT. 14.

Contract—Sawing Timber—Termination of Agreement by Owner of Timber—Recovery by Saw-mill Owner for Work Done and Moneys Expended—Damages for Wrongful Termination—Counterclaim.—The plaintiff was the owner of a saw-mill, and the defendant was the holder of a license to cut timber in the White Fish Lake Indian Reserve. On the 14th May, 1917, the parties entered into an agreement for the cutting of the defendant's timber by the plaintiff's saw-mill. In this action the plaintiff claimed \$2,000.15 for expenditures, services, and work done under the agreement and \$5,000 damages by reason of the cancellation or determination of the agreement by the defendant. The defendant counterclaimed damages for breach of the agreement. The action and counterclaim were tried without a jury at Sudbury. SUTHERLAND, J., in a written judgment, after setting out the facts and examining the items of the plaintiff's claim with particularity, stated his conclusion that the plaintiff was entitled to recover \$2,006.66 upon his first claim and \$1,000 for damages with costs, and that the counterclaim should be dismissed with costs. Judgment accordingly. G. E. Buchanan, for the plaintiff. C. McCrea, for the defendant.

SUNDSTROM v. YATES—LENNOX, J.—OCT. 16.

Mortgage—Action upon—Defence—Fraud and Misrepresentation—Failure to Prove—Mistake in Mortgage as to Amount Payable—Plaintiff Allowed as Indulgence to Recover Full Amount Claimed—Amendment—Costs.—Action to recover \$2,000 and interest on a mortgage executed by the defendant in the plaintiff's favour. The defence was that the mortgage was based upon a transaction which the defendant was induced to enter into by certain false and fraudulent representations made to him by the plaintiff. The action was tried without a jury at a Toronto sittings. LENNOX, J., in a written judgment, said, after stating the facts, that the proviso for payment in the mortgage was contradictory: the total sum mentioned was \$2,000, but the specific payments to be made were three, of \$300 each, and a final payment of \$200, making in all \$1,100. No doubt, this was an error in conveyancing, but the plaintiff did not ask for reformation or for a declaration of the intention of the mortgagor and mortgagee. The learned Judge said that he was disposed to think that representations material to the contract and false to the knowledge of the plaintiff were made to and acted upon by the defendant; but this was merely conjecture. The defendant had failed to prove the misrepresentation, and could not succeed upon his defence.