

OWEN SOUND LUMBER CO. v. SEAMAN KENT CO. LIMITED—FALCONBRIDGE, C.J.K.B.—FEB. 7.

Contract—Manufacture and Sale of Lumber—Refusal to Accept—Defects—Evidence—Time of Delivery—Damages—Resale of Lumber by Vendors—Mode of Selling—Reference.]— Action for the price of lumber or for damages for breach of contract by refusal to accept the lumber. The learned Chief Justice said that the defendants endeavoured to import into the contract a provision as to time, which could not be done. The contract was of their own drawing. The defects charged in manufacture, piling, etc., were not established by the weight of evidence. The plaintiffs' was a country mill, and the defendants had dealt with them before. Judgment for the plaintiffs for \$1,862.96 and costs. The defendants complained of the mode adopted by the plaintiffs in selling the lumber, as not tending to get the best price. They did not satisfy the Chief Justice that a better result could have been produced by any other method of disposing of it. But the defendants might have a reference as to damages at their own risk, and in that event further directions and subsequent costs would be reserved. W. H. Wright and J. C. McDonald, for the plaintiffs. F. Smoke, K.C., and F. H. Kilbourn, for the defendants.