

on that day. He says that after the signing of the contract, before payments could be arranged or made definitely, it was necessary for him to apprise the defendant bank of the contract and get some kind of a consent from them. It appears and is admitted all round that at the date of the contract the bank had a lien under the provisions of the Bank Act upon the saw-logs intended to be covered by the contract and that such lien is still in existence. Bishop says that after the contract was signed, he wrote a letter dated April 6th, 1910, to Mr. Strathy of the defendant bank, enclosing a copy of the contract and directing his attention to paragraph 8 thereof, and asking him to send a release upon the logs so that there would be nothing to interfere with the making of the payments according to the contract. This letter was produced. A reply to it was received dated April 12th, in the following terms: "I am in receipt of memorandum of agreement made between your company and the M. Hilty Lumber Company, of the city of Milwaukee. I note that under this contract you are to receive \$68,000 in cash or promissory notes from that company on the 15th instant. This bank hereby agrees to release its lien on the logs to the M. Hilty Lumber Company as its interests may appear."

Bishop says that it was only after receiving this that he went to Milwaukee and that upon shewing the correspondence to Forster the notes were made out on or about the 15th April, 1910. He says that at the interview about the question of discount, which occurred on that date, all he said was that it seemed to him a reasonable proposal and if matters went smoothly under the contract he would endeavour to get his company to acquiesce in the proposed 2 per cent. discount.

Albert Miller was called and stated that he was present at a talk between Forster and Bishop at the time that the notes were issued. He thinks it was about the 15th March, 1910. He cannot say whether it was on the same day that the contract was signed or not. He corroborates Forster in his statement about his proposal that there should be a new contract drawn and that Bishop said there was no need of that, the contract could stand and the 2 per cent. could be deducted. He says he thinks the notes were dated ahead.

Upon this evidence the plaintiffs ask me to find first, that there was a definite representation on the part of Bishop that there would be a cut of 5,000,000 feet at least