

terest, from the date when the former was first payable, and on the monthly sums making up the latter, from the respective dates at which they should have been paid.

As to the balance of the lumber still in the possession of the defendants and available under the contract, the plaintiffs are to be at liberty to apply to the defendant lumber company and to obtain the same from it, but under the circumstances and to avoid further difficulty and possible litigation they must first pay said \$7,060 and \$1,360 and interest, and also pay for said balance of lumber in full as loaded on the boat.

The defendant lumber company and the defendant bank will each have its costs against the plaintiff company.

HON. MR. JUSTICE SUTHERLAND.

JULY 9TH, 1912.

McLEAN v. DOWNEY.

3 O. W. N. 1592.

Negligence—Injury to Scow—Damages.

Action for damages suffered by foundering of plaintiffs' scow while at dock of defendants' and under their custody and control through their alleged negligence. Defendants denied responsibility for the safe-keeping of the scow, and that they had been negligent.

SUTHERLAND, J., *held*, defendants guilty of negligence and gave judgment for plaintiffs for \$1,211.80 damages with costs.

Action to recover damages for injury to plaintiffs' sand-scow, owing to defendants' alleged negligence.

J. E. Irving, for the plaintiffs.

J. L. O'Flynn, for the defendants.

HON. MR. JUSTICE SUTHERLAND:—In the month of October, 1911, the plaintiffs were owners of a sand scow, and had a verbal contract with defendants to deliver sand at the latter's dock in the St. Mary's river, at the town of Sault Ste. Marie. The scow had originally cost about \$4,000, and was then about seven years old.

On the deck of the scow was a box about 78 feet long by 20 feet wide and 4 feet in depth, into which the sand was deposited when loading. There were holes along the sides and bottom of the box, through which the water from the wet sand escaped and ran off the deck. At both bow and stern there were two hatches rising about seven or eight inches above the deck, and fitted with loose covers. Along the entire box