

be a cut of 5,000,000 feet at least on the Mississauga river of the kind of timber contracted for; (2) that there was an agreement that a discount of two per cent. should be allowed. The plaintiffs did not directly ask for a rectification of the agreement. They deducted \$7,060 from the price, on the assumption that the agreement was entered into on the representation that the Mississauga run would cut into at least 5,000,000 feet, etc., and sought to treat the contract as though it contained a clause guaranteeing that. SUTHERLAND, J., said that he was not clear that it was open to the plaintiffs to shew by oral testimony that any such representation or guarantee had been made or given by Bishop prior to or at the time of making the contract—it was not the case of a collateral agreement about something not referred to in the document: *Lindley v. Lacey* (1870), 17 C.B. 578; *LaSalle v. Guilford*, [1901] 2 K.B. 215; *Lloyd v. Sturgeon Falls Pulp Co.* (1901), 85 L.T.R. 162. In any case, he was unable to find that there was any representation by Bishop that the Mississauga cut would run at least 5,000,000 feet; or that there was any false or fraudulent representation made by Bishop; or that there was any prior or contemporaneous oral agreement constituting a condition upon which performance of the written agreement was to depend; or that Bishop ever agreed that the two per cent. discount should be allowed. The plaintiffs claimed also \$300 for demurrage. This, too, the learned Judge held, failed upon the evidence. The action was, therefore, dismissed as against the defendant lumber company. The defendant bank, under the terms of their letter, simply agreed to release their lien as the plaintiffs should from time to time, by paying for the lumber according to the terms of the contract, make their interest appear. The action failed also as against the bank. Judgment for the defendant lumber company, upon their counterclaim, for \$7,060 and \$1,360, with interest from the date when the former sum 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 remainder 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 obtain it; but, in the circumstances, and to avoid further difficulty and possible litigation, they must first pay the \$7,060 and \$1,360 and interest and also pay for the remainder of the lumber in full as loaded on the boat. Both the defendants to have their costs against the plaintiffs. M. McFadden, K.C., and J. E. McEwen, for the plaintiffs. J. L. O'Flynn, for the defendant lumber company. P. T. Rowland, for the defendant bank.