

shortly, but it was also known to the defendants that the car situation was such that deliveries would be governed by the supply of cars, and, though not expressly so stipulated, it was understood by both parties that the deliveries were to be made in a reasonable time, having in view all the circumstances.

(5) That the plaintiffs did not expressly accept the defendants' offer. They made a counter-proposition, and under that counter-proposition they shipped and the defendants took delivery—the parties not being agreed as to the terms of the shipment and acceptance, except that both parties were of the opinion that the deliveries were made in a reasonable time.

(6) That the whole 2,000 piles were not delivered because the defendants refused to accept 80-foot piles, rather than because the plaintiffs were unable to deliver them.

(7) That the plaintiffs did not bind themselves to deliver the 1,000 pieces of shorter lengths, and consequently did not make default in reference to the 385 pieces by which the total deliveries fell short of 2,000 pieces.

The appeal should be allowed with costs, and judgment should be entered for the plaintiffs for \$3,335.41 with interest from the 4th October, 1918, and costs.

*Appeal allowed.*

---

## HIGH COURT DIVISION.

SUTHERLAND, J.

MARCH 16TH, 1920.

## GALLINGER v. GALLINGER.

*Contract—Parent and Child—Oral Bargain between Father and Son—Son Put in Possession of Land—Evidence to Establish Contract—Statute of Frauds—Acts of Part Performance—Improvements Made by Son—Death of Father Intestate—Action by Administratrix for Possession—Parties—Addition of Heirs at Law—Counterclaim.*

Action by Clarey Gallinger, the widow and administratrix of the estate of James Alexander Gallinger, deceased, to recover possession of the south-east quarter of lot 24 in the 8th concession of the township of East Nissouri.

The deceased was the registered owner of the land, but his son Zenas Gallinger, the original defendant, was in possession thereof at the time of his father's death.