

5,000,000 feet. Forster had some personal knowledge in the matter obtained by a personal inspection of the territory and the logs. He had opportunities to make fuller and more definite inspection, and he had the opportunity to have inserted a clause in the contract protecting his company. When he came to deal with the Foss people he himself inserted a clause stating it was an estimated amount.

I think everything before the day on which the contract was signed was merely preliminary, and that the parties were dealing with the lumber on the basis of estimates as to what each river might yield in the way of cut.

I am unable to find that there was any false or fraudulent misrepresentation made by Bishop.

I am unable to find that there was any prior or contemporaneous oral agreement constituting a condition upon which performance of the written agreement was to depend.

I am also unable to find that Bishop ever agreed that the 2 per cent. discount should be allowed. Here again there is conflict of testimony, Forster and one of the millers saying there was no such an agreement, and the plaintiffs asserting it in their correspondence, Bishop, on the contrary, contradicting them and his letters at the time stating his position to be the same then as it was at the trial, viz., that while he recognized a certain fairness in the proposal that such a discount should be conceded, he had never agreed on behalf of the defendant lumber company to concede it, but had left it an open question, promising that if matters went agreeably under the contract he would endeavour to induce the defendant lumber company to allow it.

In view of my findings as to these two questions, and in view of the contention of the defendant lumber company at the time that they refused to load the plaintiff's boat, that the defendants were not under the contract paying as they were required, I think the plaintiffs' claim also as to the \$300 must fail.

The plaintiffs' action will, therefore, be dismissed as against the defendant lumber company. It also fails as against the defendant bank.

The bank under the terms of their letter simply agreed to release its lien as the plaintiff company should from time to time, by paying for the lumber according to the terms of the contract, make its interest appear.

The defendant lumber company will, therefore, have judgment for the two sums of \$7,060 and \$1,360 with in-