

was found to be taking in water, and she ultimately sank, and so was badly damaged, and was taken to a dry-dock in the State of Michigan for repairs. SUTHERLAND, J., reviewed the evidence, and found that the damage was caused by the negligence of the defendants; and he allowed as damages: \$488.15, paid for repairs; \$121.25, paid for customs duty on the repairs; \$105.40, for the use of the plaintiffs' tug while engaged in pumping the scow out, taking her to the dry-dock, bringing her back, etc.; and \$500 for permanent injury to the scow—\$1,211.80 in all—with interest from the date of the writ of summons and costs of the action. He declined to allow anything for the loss of the use of the scow while undergoing repairs. J. E. Irving, for the plaintiffs. J. L. O'Flynn, for the defendants.

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M. HILTY LUMBER CO. v. THESSALON LUMBER CO.—SUTHERLAND, J.—JULY 9.

*Contract—Sale of Timber—Representation or Guaranty—Oral Testimony—Admissibility—Fraud and Misrepresentation—Contemporaneous or Prior Oral Agreement—Discount on Price—Demurrage—Evidence—Counterclaim.*—This action arose out of a written contract for the sale of lumber. The Traders Bank of Canada were made defendants, as well as the Thessalon Lumber Company. The contract was in this form: "The party of the first part" (the Thessalon Lumber Company) "does hereby sell to the party of the second part" (the M. Hilty Lumber Company) "all of the white pine No. 3 and better lumber, to be cut from the saw-logs now cut and owned by it in the woods, on skids, or in the streams and on the banks of the streams on the Little Thessalon and Mississauga rivers, in the district of Algoma." The plaintiffs alleged that they were induced to make the contract by certain verbal representations made to their president, one Forster, by one Bishop, the general manager of the defendant lumber company, on the truth and accuracy of which they relied, to the effect that the defendant lumber company would undertake to deliver all of the saw-logs owned by them at the time of the contract, then cut, and manufacture the same into lumber, upon specifications to be furnished by the plaintiffs, and that the Mississauga run would cut into at least 5,000,000 feet of grade No. 3 and better. Upon the evidence, the plaintiffs asked for findings: (1) that there was a definite representation on the part of Bishop that there would