

better, and, therefore, seek to treat the contract as though it did contain a clause guaranteeing that, and so have retained the said sum for damages as on a breach thereof.

I am not at all clear that it was open to the plaintiffs to shew by oral testimony that any such representation or guarantee on the part of Bishop, prior to or at the time of making the contract had been made. This is 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. Gilford*, L. R. 1901, 2 K. B. D. 215; and *Lloyd v. Sturgeon Falls Pulp Co.*, 1901, 85 L. T. R. 162.

In paragraph 1, of the document the quantity of saw-logs is dealt with, viz., "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, province of Ontario.

What the plaintiffs contend for would be in effect that they should be permitted to give evidence that there was an agreement with reference to the quantity which is expressly dealt with in the contract, guaranteeing that it, in the case of one of the rivers, be at least 5,000,000 feet. Nor is there any ambiguity about clause 1, which might afford an opportunity to introduce evidence to clear it up.

In clause 8 of the agreement the parties have expressly provided that unless the defendant lumber company obtained a release to the plaintiffs, as their interests might appear from the defendant bank's lien upon the lumber, the contract should not become operative and binding, and in clause 12, it is provided that, should the United States Government impose a certain kind of duty on lumber from Canada, the contract should become null and void.

One can scarcely, under these circumstances, credit that there should be another most important element of the contract, and on which it hinged, omitted in the manner stated by the president of the plaintiff company.

Bishop says that he wanted to sell the cut on each river independently of the other, but that Forster insisted on both. The contract was not rushed into in a hurried way by Forster, but was the result of several interviews and negotiations lasting sometime.

I am unable to find that there was any representation by Bishop that the Mississauga cut would run at least