

Plaintiff replied on 9th September, 1903, as follows:—
“Yours of the 5th rec. Excuse my not answering sooner, but I was up the lake. I will bring down any quantity that you wish from Byng Inlet, as I can mix it with another lot. I will be pleased to bring down what you may have for \$1 per M, you to take it off free. Hoping to be favoured with your work, I remain,” etc.

Defendants on 10th September, 1903, called up plaintiff by telephone, when plaintiff informed defendants that he could carry defendants' lumber for them, as he had part of a cargo to bring down for Bryan Bros., of Collingwood; the quantity defendants had would fill or make up a cargo, and the price would be \$1 per M, but if he brought defendants' lumber by itself he would have to charge more than \$1 per M.

On 10th September defendants wrote plaintiff confirming the telephone conversation as follows:—“In accordance with our conversation by telephone this morning, you will please go to Byng Inlet and get from Messrs. Holland, Graves, Maubert, and George, some 125 M 1 to 2 red pine and 60 to 75,000 2½, 3 & 4 white pine, bring it to Midland, and we will be ready to unload on arrival. Price to be \$1 per M free off.”

Plaintiff shortly thereafter proceeded with his tug, and barge or lighter in tow, to Byng Inlet, and there took on board the barge or lighter 62,000 ft. of lumber known as shorts, being lumber from 4 to 10 ft. in length, for Bryan Bros., of Collingwood, and 161,914 ft. of defendants' lumber of the kinds specified in defendants' letter of 10th September above referred to.

Plaintiff had previously carried lumber for defendants, and defendants were aware of the character of vessels and mode adopted by plaintiff in carrying lumber. Plaintiff engaged, to load the lumber on vessel, men who usually did that kind of work and were experts at it, and the lumber was properly and carefully loaded on the barge or lighter.

After the loading plaintiff obtained from the manager of Holland, Graves, & Co., W. E. Bigwood, bill of lading as follows:—“Byng Inlet, Sept. 16th, 1903. Shipped, in good order, by M. E. Bigwood, agent, for account and at the risk of whom it may concern, on board the lighter in tow of tug ‘Saucy Jim,’ whereof Francis Scott is master, now lying at this port and bound for Midland, the following amount