

It was agreed at the trial that all payments have been made for lumber delivered, and that the contract has been fully performed up to say the 17th August, 1911, except that plaintiffs have deducted the \$7,060 for the shortage and \$1,360 for the discounts. The defendant company is willing to deliver the balance of the 1910 cut, approximately 900,000 feet, on payment of these deductions, together with the 5 per cent., as the boats shall be loaded hereafter with said balance pursuant to the contract. The plaintiffs are willing to accept this lumber, provided they are only charged the 5 per cent., for whatsoever the said balance is, or in case it overruns on said 900,000 and the overrun. The \$7,060 was admitted by the plaintiff to be stated damages for breach of the contract as to the shortage in connection with the 5,000,000. Forster also admitted that he understood that the bank had a lien at the time of the contract and that it has continued down in force, and is now an existing lien, subject to plaintiffs' rights under the letter produced by the defendants from the bank, and shewn to them.

The lumber inspector, William E. Woodey, was called on behalf of the plaintiffs, and corroborated Forster in his statement, that when he and Bishop were up at Thessalon and Nesterville, Bishop represented that there would be 5,000,000 or 5,500,000 cut on the Mississauga river. He says on the strength of this he wrote to parties for the plaintiffs for the purpose of placing the 5,000,000 of Mississauga cut. A contract was produced from the plaintiffs' custody and filed by the defendants, which shews a sale on the 27th April, 1910, by the plaintiff company to E. B. Foss & Co., of "all of the white pine No. 3 and better lumber, ten feet and longer, to be cut by the Thessalon Lumber Company from saw-logs cut in the township of Gould in the winter of 1909 and 1910, now in the Mississauga river in the district of Algoma, province of Ontario, estimated to be about 5,000,000 feet."

Forster says that he added the words "estimated to be about 5,000,000 feet," at the request of the purchaser, he having intimated to him that the cut would run about that amount.

The plaintiffs in this action do not ask in so many words for a rectification of the agreement in question. They have deducted \$7,060 on the assumption that the agreement was entered into on the representation that the Mississauga run would run into at least 5,000,000 feet of grade No. 3 and