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HON. MR. JUSTICE LENNOX.

JUNE 30TH, 1914.

GRANT, CAMPBELL & CO. v. THE DEVON LUMBER  
CO., LTD.

6 O. W. N. 673.

*Contract—Timber—Innocent Misrepresentation as to Quantity—  
Rectification of Contract—Payment for Value of Work Done—  
Evidence—Findings of Trial Judge.*

A. was induced to enter into a contract with B. to cut timber upon the innocent and mistaken representation of the latter as to the quantity to be cut. Both parties intended as the basis of the contract that 2,500,000 feet was to be cut and got out, although the contract itself was to clear "the whole area." A. cut a much larger quantity than the 2,500,000 feet without being aware of it.

LENNOX, J., *held*, that A. was entitled to the balance of the amount due for the work done since B. got the benefit of a mutual mistake as to quantity which was the basis of the contract and for which he was responsible.

Action to recover the balance of an amount due to the plaintiffs for work done for the defendants in cutting and getting out logs in timber limits, and for rectification of the agreement between the parties.

R. A. Pringle, K.C., for plaintiff.

M. J. Gorman, K.C., for defendant.

HON. MR. JUSTICE LENNOX:—The question to be determined in this action is the basis upon which the agreement in question was entered into; and, incidentally and necessarily, in this inquiry, to determine whether the defendants misrepresented the subject matter of the contract, that is, the quantity of timber to be cut and got out; and, if so, was the misrepresentation falsely and fraudulently, or only mistakenly and innocently, made?

It was material to the plaintiffs to know approximately the extent of the work they would be called upon to perform