

under that would be included as mill-culls except dead culls, which would not be included; and that Thompson produced and shewed the plaintiff a book called "National Association Rules for Scaling Lumber," by which he verified his explanation.

There was no dispute as to the measurement; the question was wholly one of grade. It was not disputed that the conversation alleged by the plaintiff took place, and that the book stated that "mill-run" meant "the full run of the log one-third common and better." "No. 3 includes all lumber which will cut 25 per cent. and over sound." Thus there was no dispute as to the accuracy of the plaintiff's statement and as to the information he received from Thompson and from the book.

The written agreement was prepared and signed by the parties after this conversation; and the agreement contained the words "mill-culls and hearts out." The plaintiff said that these words were not explained to him, that he did not understand them, and that they ought not to operate to his prejudice.

It was not disputed by the plaintiff that the measurement of the lumber as paid for by the defendants was correct if the agreement should stand as it reads.

The trial Judge found against the plaintiff; and there was evidence to support the finding.

Having regard to the whole evidence, independently of the finding of the trial Judge, the written agreement between the parties had not been successfully attacked. No doubt there was the conversation stated by the plaintiff, but he had not made out a case of fraud nor a case for reformation of the agreement.

There was a further question—as to tie-sidings. These were settled for at \$12 per thousand, which was the ruling price for tie-sidings at the time of the contract; but the plaintiff contended that they were included in the agreement at \$23.50 per thousand. This did not appear from the evidence. The price paid was the current price. The lumber included in the contract was sawn to order, and did not include tie-sidings; they were afterwards arranged for. What was said in respect of them was rather indefinite, but it was acted upon as a sale and paid for, without dissent by the plaintiff, at the current price.

The appeal should be dismissed with costs.

RIDDELL, J., for reasons stated in writing, agreed in the result.

SUTHERLAND, J., agreed with RIDDELL, J.

KELLY, J., agreed in the result, stating reasons in writing.

Appeal dismissed with costs.