

and dates of shipping and other matters were specified. The plaintiffs accepted the offer thus made, after a change had been made in the specifications of sizes. The defendants then proceeded to perform the contract, and made deliveries thereunder aggregating nearly 700,000 feet, but refused to make further delivery, contending that the contract was for the sale and delivery at Midland of the lumber which they would produce from their stock of Massey logs up to the amount in feet in each item listed in the contract, and that the reference to "one million feet of Norway pine which we are cutting out at Midland" was an estimate of production by them from these Massey logs, and was subject to the clause, "The above to be what we produce from our Massey logs up to the above amounts in feet in each item."

The important question was, whether the offer to supply one million feet was an absolute or merely a conditional offer. The learned Judge's view was, that the contract was for the delivery of one million feet, and that the reference to the lumber to be produced from Massey logs was a stipulation to assure to the plaintiffs that lumber of that kind and quality would be delivered.

The plaintiffs contracted for the sale to their customers of quantities of lumber on the assumption that they would receive under their contract with the defendants the full one million feet. The defendants having refused to make further deliveries, the plaintiffs on the 24th September, 1917, gave notice that, unless they received by the 30th September positive assurance that deliveries would be made of the remainder of the lumber, they would buy in the open market and charge the defendants with the difference in price. The defendants adhered to the stand they had already taken. The plaintiff then purchased elsewhere at \$32 a thousand feet, which, upon the evidence, was a moderate price at the time. Upon the basis of this purchase, the damages for breach of the contract of the 6th October, 1916, should be assessed at \$2,605.64.

The second contract was made on the 25th August, 1916. Under it the plaintiff claimed \$78 as damages for the non-delivery by the defendants of 120 pieces of Norway pine. There was a dispute as to whether this contract was for 450 pieces "at least," the words quoted having been written in the duplicate produced by the plaintiffs. The defendants said that the contract was that the plaintiffs should have whatever quantity the defendants' logs would produce up to 450 pieces, and that all that it was possible to cut from these logs was delivered. The burden of proof was upon the plaintiffs, and they had not satisfied it. The claim for breach of the contract was not made out.

There should be judgment for the plaintiffs for \$2,605.64 and costs.