

SECOND DIVISIONAL COURT.

DECEMBER 27TH, 1918.

## DOUGLAS v. BURY.

*Contract—Sale of Timber—Agreement in Writing—Prices of Different Kinds of Timber—"Mill-run"—Meaning of—Terms Used in Document not Understood by Vendor—Fraud not Shewn—Case not Made for Reformation—Findings of Fact of Trial Judge—Appeal.*

Appeal by the plaintiff from the judgment of BRITTON, J., 14 O.W.N. 241.

The appeal was heard by CLUTE, RIDDELL, SUTHERLAND, and KELLY, JJ.

E. G. Porter, K.C., for the appellant.

W. J. Elliott, for the defendants, respondents.

CLUTE, J., in a written judgment, said that the plaintiff's claim was to recover a balance alleged to be due on a sale of lumber by the plaintiff to the defendants, under a written agreement as follows:—

"We have this day purchased from you stock of birch, maple, elm, basswood, and ash at seller's mill at Wallace, Ont., sawn to buyers' order at \$23.50 per M. mill-run, mill-culls and hearts out, and mill-culls at \$8.50 f.o.b. cars Wallace, Ont. (dead culls and hearts not included in this sale).

"It is understood that buyers are to advance up to \$12 per M. before stock is actually fit to ship. Shipment after 90 days on sticks. Advance to be in the form of drafts or notes at 3 months on buyers and to be discounted by seller and discount to be paid by seller.

"Inspection by Robert Bury & Co.

"Terms 2% 30 days from date of shipment.

"Robert Bury & Co.,

"per F. M. Thompson.

"Agreed—

"W. J. Douglas."

The plaintiff said that he had no experience in the manufacture, sale, or handling of lumber; and that, when the defendants, through their agent Thompson, who was an expert, desired to purchase his stock as "mill-run," he (the plaintiff) did not understand or know what the grading of the lumber would be on such a sale, and inquired of Thompson the meaning of the term "mill-run," and was informed by Thompson that "mill-run" meant all lumber that would contain 25 per cent. of sound lumber, and that anything