

This is by no means an acceptance of the offer—the parties were not together. Mr. Harris did not reply to this letter until 23rd September, and then, by letter of that date to the plaintiff, he withdraws his offer of the 100,000. The letter is as follows:—"Referring to your telegrams and letters in connection with delivery of cedar ties to Fair Haven, N.Y., I could not undertake to deliver the quantity of ties specified in your letter, but could *probably* deliver 50 M. standard cedar ties at the price named, 15 M. of which would be delivered this fall, if cullage was satisfactory, and the balance in August, 1900. I cannot say definitely how soon this fall's ties could be delivered, as I would first have to arrange with transportation companies to carry them. If we can do it on the above basis, kindly advise me, and I will arrange at once for the freighting of this fall's delivery."

This letter may be considered in a two-fold aspect. First, it definitely puts an end to the negotiation for the 100,000 ties. I find as a fact that there was no agreement for the delivery of the 100,000 ties. Secondly, this letter contains a new offer, not to deliver 50,000, because Harris puts that number as only a probable number, but he couples with this probability a definite statement that 15,000 would be delivered that fall, conditioned only upon "cullage" being satisfactory. This letter was received by plaintiff on the 26th September, and he immediately wired reply. The telegram was not an acceptance of the new offer, but it was a message holding on to the former offer, and expressing a desire to get the 50,000 as part of the 100,000. On Saturday the plaintiff wrote to Harris, repeating and confirming the telegram, and then accepting what plaintiff assumed to be a new offer of 50,000. Harris, as stated, had not definitely offered 50,000—but I think he did offer the 15,000, and that plaintiff accepted that offer. In fact, plaintiff was then willing to accept any number Harris would agree to deliver.

Further correspondence followed, and Mr. Harris seemed anxious to carry out this last contract—but he found more difficulty in getting transportation than he had expected. Each tried to help the other in that respect but without success. Plaintiff was urgent about getting ties, and on the 25th October Mr. Harris wrote to plaintiff stating that he had been unable to secure transportation for the ties, and that, as the season was so far advanced, he had abandoned the idea of delivering any that fall. Mr. Harris did not in that letter say more. The correspondence was kept up during the fall, and Mr. Harris did not repudiate until 28th March, 1900, when he wrote to plaintiff informing him that, as the price of ties had advanced 8 to 10 cents, he would not