

quantity of timber to be cut and got out; and (3) whether, if there was misrepresentation, it was falsely and fraudulently made, or only mistakenly and innocently. The learned Judge finds as facts that the actual quantity of timber was 4,829,846 feet; that the plaintiffs would not have entered into the contract had they known or had reason to believe that the quantity exceeded 2,500,000 feet; that the defendants knew this; that they were not guilty of wilfully false or fraudulent representations, although they represented to the plaintiffs that what they were contracting to get out was approximately 2,500,000 feet, and the plaintiffs accepted and acted upon that representation. The defendants were honest, but mistaken. It was a mutual mistake. There was no manifest need to limit the undertaking of the plaintiffs in terms; they were to strip the whole area; both parties intended to deal with the cutting and getting out of about 2,500,000 feet. The delay in scaling resulted in the plaintiffs getting out a much larger quantity without being aware of it. The learned Judge said that he would have no hesitation in reforming the contract so as to carry out the actual intention of the parties, as found by him, if that were necessary. But it was admitted that, if the plaintiffs' contention was correct, they were entitled to \$21,726.48; and two additional items of \$454.75 and \$398 may be conceded by the defendants; making a total of \$22,578.23. Judgment for the plaintiffs for this amount with costs; but, if the defendants desire it, they may have a reference to the Local Master at Ottawa to ascertain what sum, if any, is owing to the plaintiffs in respect of these two items; and, in that event, the judgment will be for \$21,726.48, including the sum paid into Court, with costs, and for a reference as to the two items, costs of the reference being reserved. R. A. Pringle, K.C., for the plaintiffs. M. J. Gorman, K.C., for the defendants.

---

KLENGON V. GOODALL—LATCHFORD, J.—JUNE 30.

*Sale of Goods—Action for Price—Written Agreement—Statute of Frauds—Sale by Sample—Findings of Fact as to Quality—Condition as to Cleanness—Counterclaim—Goods Stored for Purchaser—Pledge by Vendor.*—Action to recover the price of 2,352 bushels of pease, sold by the plaintiff to the defendant by a written contract dated the 22nd November, 1913; the pease were delivered to the defendant at Wiarton. The defendant admitted the making of the contract; but asserted that it was not sufficient under the Statute of Frauds, and alleged that the pease were not according to the sample mentioned in the agreement,