

was a large dealer in ties, and resided at Ottawa. The correspondence commenced by a letter of inquiry from plaintiff to Harris, dated 25th August, 1899, informing him that the plaintiff desired to buy any part of 100,000 No. 1 standard cedar ties for delivery at Buffalo on or before 1st June, 1900, and asking Harris to name a price. On the 1st September, 1899, F. S. Upton, who was and is in the employ of plaintiff, visited Ottawa and had a general conversation with Harris on the subject, but no contract was then made, and, in my opinion, nothing turns on this conversation. The parties fully understood one another as to what was wanted, and in reference to which the correspondence was to continue.

On the 31st August, 1899, Harris wrote to plaintiff, in reply to plaintiff's letter of 25th, as follows: "Will agree to deliver you 100 M. standard cedar ties on dock at Fair Haven, N.Y., at 35 cents a piece, duty to be paid by you. I could probably deliver 25 to 30 M. this week, and the balance as early as they could be got out next spring." Assume that this was "an option," as plaintiff calls it, and open to him until the 15th September, what did plaintiff then do? First, he wired an acceptance of the offer, and second, he qualified that acceptance by a letter to Harris. The letter is as follows: "I have just wired you that I will take the 100,000 standard No. 1 cedar ties that you offered me in your letter on 31st August at 35 cents each, delivered free on dock, Fair Haven, N.Y., duty to be paid by me, all of which I now confirm. You may commence shipping at once, and get in just as many this fall as possible, at least 25 to 30 M., and the balance as early next spring as possible, and not later than 1st August, to be counted and inspected at destination and paid for in 30 days after arrival and inspection. I think they will all go to Fair Haven, N.Y., but may possibly take some at Charlotte, as the writer explained when there." This letter, in fact, as the plaintiff intended, and as Mr. Harris evidently understood, superseded the telegram. This letter was not an acceptance of the offer of Harris. It brought in new terms and conditions. Harris said he could probably deliver 25 to 30 M. that fall. Plaintiff said, you must deliver at least 25 to 30 M. that fall. Plaintiff stipulated that all should be delivered not later than 1st August, 1900. Plaintiff stipulated that the ties were to be counted and inspected at destination, and that they were only to be paid for in 30 days after arrival and inspection. Then, whatever plaintiff intended by it, he said he might possibly take some at Charlotte. Charlotte is a considerable distance farther from the place of shipment than Fair Haven.