

The Statute of Frauds was pleaded, and so the transaction must be found in the writings. And they opened with the plaintiff's offer, by post-card, to sell to the defendants one car two-inch maple and two cars two-inch white and red oak and some white ash. The next writing was the memorandum made by the witness Little, after going to see the lumber for the defendant, in consequence of their having received the post-card offer. The memorandum was intended to evidence a purchase to be made of the lumber, if the defendants accepted it; the memorandum was seen by the plaintiff, but not signed by him. In it two-inch lumber only is mentioned. Then follows the defendants' offer to buy, at the price mentioned in the memorandum—\$23 a thousand—the plaintiff's stock of oak, maple, and white ash, according to his offer. Dimensions are not in any way expressly mentioned in this writing. The plaintiff's answer to that offer, conveyed by post-card, states that the plaintiff "will deliver all my maple, oak, and white ash, f.o.b. car, Vanessa street, for \$23 per M.," etc. And the last writings of importance upon this subject are the defendants' letters to the plaintiff of the 11th August, in which they say, "Will you kindly write to us by return mail when it will be convenient to you to ship the 2M. maple, ash, and oak we bought from you some time ago?" and the plaintiff's answer to it by letter in these words: "Yours to hand. Will try and be ready to load lumber next week. Will telephone you when I get cars." Not a word of objection to or comment on the statement in the defendants' letter—in effect, that their purchase was of two-inch lumber.

The defendants denying, as they do, the purchase of any but two-inch lumber, it cannot be held, upon the evidence afforded by these writings, that they purchased also one-inch lumber. The most that can be said is, that there was really no agreement—that the parties were not bargaining as to the same thing: the subject-matter of the negotiations on the one side was "all my lumber," whilst on the other it was "your two-inch lumber."

Subsequent letters seem to indicate that that which the defendants then had most in mind was the quality, not the dimensions, of the lumber; but all that might be although the transaction, so far as they were concerned, related only to the two-inch lumber; and the rejection of the lumber was, in part at least, because of the plaintiff's insistence upon delivery of the one-inch lumber under the contract; and this action was brought to recover damages in respect of the one-inch as well as the two-inch lumber, and such damages had been claimed throughout.

If the parol evidence could affect the question, it would be difficult to find greater certainty in it than in the writings.