SUTHERLAND, J., in a written judgment, said that the plaintiffs in their statement of claim alleged that on the 11th March, 1918, the plaintiffs and defendants entered into an agreement whereby the plaintiffs agreed to sell and the defendants to buy the cut of laths of the season 1918 from the mill at Davidson, Quebec; that the laths were to be of a size 1½ inches by 4 feet in length and the price $4.75 per thousand pieces f.o.b. cars at Davidson, shipment to be made to the defendants at Ottawa in car-load lots; that a car-load was shipped and paid for, a second car-load shipped and refused; and that the defendants refused to accept further deliveries. The defendants set up that it was a term of the agreement that the laths should be of the quality known in the trade as "mill run;" that the shipment contained in the first car, though not in accordance with the term as to quality, was accepted and paid for by them on the understanding that no further shipments would be accepted unless up to quality as required by the contract; and that the second car-load shipped to them was refused solely on the ground that it was not up to quality.

The points of difference between the parties were: (1) whether the laths from the cut of 1918 were reasonably as good in grade and manufacture as those of the cut of 1917; (2) whether they were "mill run" laths of a grade customarily known and accepted by the trade.

Both parties contracted with definite reference to the laths of the previous year.

The testimony being conflicting, the learned Judge was unable to come to the conclusion that the plaintiffs had satisfactorily proved that the laths in the two cars despatched were equal in grade and manufacture to those of the year before—the plaintiffs had not satisfied the onus that was upon them in that respect.

Upon the question, what is "mill run" or "mill grade" as customarily known and accepted by the trade? the evidence was diverse, conflicting, and somewhat confusing. Upon the whole evidence, the laths in the second car could not be said to comply with the description "mill run grade as is customarily known and accepted by the trade," in the letter of the 16th April written by the plaintiffs, who must be held to that expression, as the letter was written for the purpose of setting out in a very careful manner their understanding of the contract.

As to the counterclaim, it was shewn that the defendants had bought some No. 1 and No. 2 laths to take the place of what had been contracted for, and had paid more for them. The defendants should have judgment on the counterclaim for $500 with costs, subject to a reference at the instance of either party at that party's risk as to costs.