

all questions as to quantities by the statement "There's the map," is not in effect different from the evidence of Fitzpatrick, and taken in conjunction with his admitted boasting of his marvellous skill and accuracy as a cruiser, and his statement that there were no figures upon certain lots, because there was no timber of value in these places, is emphatic confirmation of the plaintiff's whole case as to how they figured out the quantity they were to cut and what they relied upon on entering into the contract. Where the evidence of Fitzpatrick or Grant conflicts with the evidence of Mr. Bartram, I accept the statements of these plaintiffs.

The defendants were not guilty of wilfully false or fraudulent representations, although they have unfairly and dishonestly endeavoured to hold the plaintiffs to a bargain which they perfectly well know neither party contemplated at the time the agreement was signed. But the defendants by the verbal statements of Brophy and Bartram, by repeated assurance and by placing an inaccurate map in the hands of the plaintiffs, as the basis of computation, represented and stated to the plaintiffs that what they were contracting to get out was approximately two and a half million feet and the plaintiffs accepted and acted upon this 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—the plaintiffs' were to strip the whole area, both parties intending to deal with the cutting and getting out of about 2,500,000 feet. The delay in scaling resulting in the plaintiffs getting out a much larger quantity without being aware of it. I am entirely satisfied as to the facts, the equities are with the plaintiffs, and I would have no hesitation in reforming the contract to the actual intention of the parties, as I find it, if that were necessary. The attempt of the defendants to deduct upwards of \$8,000 from the plaintiffs' earnings when upon their own shewing their loss, if any, amounts to little over half this sum, is not commendable or to be encouraged. They gained, as it was, probably \$3 a thousand on nearly a million feet put out beyond what was actually bargained for. It was admitted that if I find for the plaintiffs, the undisputed balance owing them, including \$289.94 paid into Court, is \$21,726.48. There are other items, one of \$454.75 and one of \$398, in addition, claimed by the plaintiffs, which