

Cheshire, }  
 April 5, 1910. }

## DART v. BEAN.

" ASSUMPSIT, to recover damages for breach of a written contract. Trial by the court. Transferred from the April term, 1909, of the superior court by *Pike, J.*

The contract provides that Dart "shall put his steam mill on cars, . . . and the said Bean agrees to hire it, taking it as so loaded, pay all freights, and move it to a lot owned by one P. N. Russell, . . . and do any moving on said lot necessary to saw the timber, set up and saw said timber, bear all running expenses, also all breakages or damages from other cause, except the natural wear and tear of said mill in doing the work, paying said Dart fifty cents per thousand feet for each and every thousand feet sawed, and to saw with said mill as steadily from day to day as possible." When Bean had sawed three fourths of the timber, Russell refused to allow him to saw more. The court ruled that the defendant did not agree to saw all the timber on the lot, and the plaintiff excepted.

*John E. Allen* (by brief and orally), for the plaintiff.

*Cain & Benton* (*Mr. Benton* orally), for the defendant.

YOUNG, J. Dart contends that when Bean promised to "do any moving on said lot necessary to saw the timber, set up [the mill] and saw said timber," he agreed to saw all the timber on the lot with the mill. When this clause is read in connection with the rest of the contract, it is clear that that is not its effect. It was intended to limit Dart's liability and not the timber Bean was to saw; for Bean agreed to do these things and several others, and pay Dart fifty cents a thousand for every thousand feet sawed—not fifty cents a thousand for every thousand feet of timber on the lot. In other words, Bean agreed to pay the freight on the mill, move it to the lot, help set it up, do any other moving and setting-up necessary, operate it as steadily as possible, house it in and keep it housed until Dart removed it, and pay Dart fifty cents a thousand for all the timber he sawed with it; but he did not agree to saw even a single thousand.

*Exception overruled.*

WALKER, J., dissented: the others concurred.