

SHIPPING POOR GRADES.

Usually when times are close and lumber low in price, shippers find that buyers become all the more exacting in the quality of the lumber shipped them. During the recent scarcity and high prices of lumber much was delivered and accepted that was not up to the specified grade—not because the shippers intended to hold up their customers, but because, in most cases, no doubt, it was the best they could do. Therefore it seems like a reversal of the natural order of things when, with lumber reasonably plentiful and with shippers anxious to sell, they should send forward measurable quantities of lumber that was so palpably below the grade called for as to create the impression that the shipment was made intentionally, with the possible hope that much of it would pass muster and a settlement could then be effected on whatever might be rejected.

A case very much in point was called to the attention of the LUMBER WORLD last week by a prominent Chicago wholesaler. This gentleman made a purchase of a dozen or more cars of No. 1 common longleaf yellow pine. When the lumber began to arrive the first three or four cars were unloaded and found to contain a large percentage of No. 2 and No. 3 common, which was all laid out for the examination of the shipper or his representative and the shipper was promptly notified of this fact. The latter, however, ignored the notification and meanwhile other cars came in. The consignee very properly, after looking at the lumber in the cars and finding that the same defects were visible as were found in that unloaded, refused to unload, but turned them over to the railroad company subject to the shipper's order.

Among the defects noted in this lumber, which it must be remembered was shipped as No. 1 common long leaf, were the following: Rot; black sap; rotten knots; knots so large as to weaken the price; grub holes; pin worm holes; deep stain; poor manufacture. In some stock which was intended to be 2x12-16 there were many pieces that were 1½ to 3 inches thick and the widths ranged from 11 inches to 13 inches. Some pieces were 11 inches at one end and 13 inches at the other. In some of the lumber nearly all the defects above referred to could be found in one piece.

It is undoubtedly an imposition on a buyer to have such lumber shipped him and the Chicago man's action in turning the cars back to the railroad was, we believe in this instance, amply justified. On the other hand we also believe emphatically that there are few members of the great yellow pine fraternity who would not as strongly condemn the shipper in this instance as the consignee has done. The yellow pine manufacturers, like all others, are anxious to please their trade, and would rather, we are quite sure, give the buyer a little the best of it on grade than have any trouble. In this case trouble was created for everybody, the consignee, the railroad company, the shipper and probably a bank which advanced money to the shipper on his bill of lading. It is very likely, moreover, that the latter is now holding the bag.

PREPARING FOR LUMBER TONNAGE

The taking of title to large tracts of timber lands in Washington by the Continental Timber Company, a subsidiary concern of the Chicago, Milwaukee & St. Paul Railway Company, has had the effect of enhancing the value of timber in the section of the state through which the Pacific coast extension of the railroad is projected and at the same time has proved a decided benefit to many small holders. The motives of the St. Paul road while far from being of a philan-

thropic character, have benefited hundreds of the minor owners of timber particularly, many of whom have held on to their timber by great sacrifices and have been rewarded by receiving a fair price for their holdings. The company did not invest in timber through its sole desire to enrich itself or for the purpose of assisting those who might be in need, but entirely to provide itself with a certain amount of tonnage for the coast line, once it is completed. The Hill and Harriman lines already tap the rich sawmill sections of the coast country, and in order to insure a part of the lumber tonnage the St. Paul road has provided against any complications.

The latest purchases by the Continental Timber Company have been mainly in Jefferson and Clallam counties and the company now ranks as one of the large timber holders in Washington. No figures of a definite nature in regard to the number of acres held have been made public, but in the aggregate they are thought to be in excess of the holdings of the other individual lines. The price paid for the lands is reported to have been considerably higher than that at which they could have been bought a year ago, though the advance is not looked upon as the asking of an excessive price from a corporation but rather that the advance is in line with the increased values of timber in every part of the country.

In the buying of timber lands the Chicago, Milwaukee & St. Paul road through the Continental Timber Company is fortifying itself in advance for a volume of tonnage for its new line, such as is enjoyed by the other transcontinental roads. It is apparent that the St. Paul interests were not disposed to assume the risk of securing a division of the traffic by courtesy from the Hill and Harriman roads. The officials of the latter lines have professed that the lumber traffic has been carried at a loss, but it is questionable whether they would willingly relinquish one carload of such freight to a rival line, as the St. Paul will become probably within the next twelve months. But the St. Paul need not depend entirely upon the attitude of the other lines in the matter of lumber tonnage; it will control its own forests from which tonnage can be drawn. As to how the tonnage will be developed is yet a matter to be determined. It may be that the Continental Timber Company will undertake a sawmilling business, or possibly the timber will be sold under conditions that will impose immediate cutting so as to produce lumber tonnage from the start of the new road's operations.

TIMBER TRESPASS LAW UPHELD.

The supreme court of Minnesota has again upheld the constitutionality of the law which subjects trespassers upon state timber lands to damages in double and treble the value of the timber taken. At the same time the court reversed the St. Louis county district court in a case in which treble damages had been awarded. The case in question was one in which the timber was being removed under a permit which ran for two years and had been extended for a period of one year. The holder of the permit had not at the end of the third year completed the cutting of all the timber on the land, but under the law no further extensions of the permit could be granted. The testimony adduced showed that the defendant company had conferred with the state auditor who stated there were similar cases and the timber commission would consider them, though the state auditor had made it plain that under the law neither he nor the timber commission had the authority to grant further extensions.

The action was brought by the state to recover treble damages for the wilful and unlawful cutting and removing from state lands of 2,444,020

feet of timber. The trial court found the timber to be worth \$6 a thousand feet, making the total value \$14,664.12 and ordered judgment to be entered for treble that amount less a credit of \$16,997.16 already paid the state by the company for the timber removed. Judgment was entered for \$26,995.17. By the decision of the supreme court the judgment is reduced to double the amount of the timber removed.

The decision of the court follows:

St. Louis County—State of Minnesota, respondent, vs. Shevlin-Carpenter Company, appellant.

Chapter 163, Laws 1895, which subjects a trespasser upon state timber lands to damages in double or treble the value of the timber taken, is not in conflict with the state or federal constitutions. State vs. Shevlin-Carpenter Company, 99 Minn. 158.

A permit to remove timber purchased from the state, a public sale, is limited in the first instance by section 24, chapter 163, Laws 1895, to the period of two logging seasons, with authority in the timber commission, for good and sufficient reasons, to grant one extension, and that for the further period of one year only.

It conclusively appears from the evidence that the timber in question was cut and removed by appellant after its permit had expired and that the taking was without authority of law.

The state is not estopped, in a civil action, to recover double the amount of value of timber taken by reason of the fact that the land commissioner gave appellant to understand that a further extension of the permit would be granted, and by reason of the fact that appellant proceeded in good faith, and the state caused the timber to be scaled, received payment therefor, with interest, and retained the same.

The finding of the trial court that the trespass was wilful is not sustained by the evidence.

It conclusively appears from the evidence that the trespass was inadvertently committed in good faith, upon the supposition that authority of the state had been granted.

Judgment affirmed in all respects except that the amount thereof is reduced to double the value of the timber.

Chief Justice Start dissented from the majority opinion, and said, in part:

We have, then, a case where the defendant's permit and the statute therein referred to showed on its face that it could not then be extended under any circumstances; and further, that the defendants were told by the state auditor that no state official or board had any power to extend the permit, and yet, with knowledge that their permit had expired and that the law forbade its renewal, the defendants deliberately went upon the land of the state and cut and carried away its timber thereon. They seek to mitigate this act and to establish that the trespass was not wilful, within the meaning of the statute, by evidence tending to show that the state officers having charge of its public lands had granted extensions of permits for a longer time than one year to other parties; that they permitted the defendants to go upon the land and cut and remove the timber, caused it to be scaled and received from the defendants the purchase price therefor, with interest, during the year for which they understood the permit had been extended. If this were a case between private parties the facts which such evidence tends to prove could be invoked as an estoppel against any claim of damages for a wilful trespass. They are, however, of no avail against the state. The evidence in this case tending to show either a violation of the law or a lax enforcement of it by public officers does not, in my opinion, establish the good faith of the defendants in the premises.

CUT OF MISSISSIPPI MILLS.

HATTIESBURG, MISS., Nov. 5.—The inactivity in the lumber industry in southern Mississippi is reflected in the monthly report just issued by E. A. Walker, secretary of the Mississippi Pine Association, showing the operations of 100 mills during September, the last period for which statistics are available. Secretary Walker's report shows that the total shipments, interior and local, and not including export, were 19,747,078 feet, a decrease of 27 percent as compared with August. The total sales, interior and local, and not including export, were 21,120,758 feet, a decrease of 29 percent as compared with the preceding month. Exports of lumber show an increase, however, the export movement for September being 19,218,212 feet, an increase of 18 percent, while the sales contracted for export during the month were 19,401,028 feet, an increase of 21 percent as compared with the previous month. It is shown that during the month seventy-five sawmills were operated an average of only eleven and two-fifths days, and forty-nine mills were operated an average of sixteen and two-fifths days during the month preceding.