

that it will be observed with respect to the transaction in question." Here, plaintiff's proffered evidence, showing transactions between the seller and *other* buyers, does not fit within any of the above terms.

R.R.B.

ARTICLE 2: SALES

SECTION 2-104. Definitions: "Merchant"; "Between Merchants"; "Financing Agency"

COOK GRAINS, INC. v. FALLIS
395 S.W.2d 555 (Ark. 1965)
Annotated under Section 2-201, *infra*.

SECTION 2-201. Formal Requirements; Statute of Frauds

COOK GRAINS, INC. v. FALLIS
395 S.W.2d 555 (Ark. 1965)

Defendant, a farmer, allegedly entered into a verbal agreement with an agent of plaintiff, a grain dealer, to sell 5,000 bushels of soybeans to plaintiff. Thereafter, in confirmation of the oral agreement, plaintiff sent a proposed written contract, which it had signed, to defendant for his signature, but defendant neither signed nor returned the writing. When defendant refused to deliver the beans, plaintiff brought an action for breach of the alleged contract. Plaintiff contended that defendant was a "merchant" and that, even though he had not signed the writing as required by Section 2-201(1), the agreement was enforceable under Section 2-201(2) because defendant failed to give notice of his objection to the written proposal. The trial court entered judgment for defendant.

In affirming, the supreme court held that the defendant was not a "merchant" within the meaning of Section 2-201(2), and thus his failure to object to the proposed contract within ten days after he had received it did not render it enforceable. The court interpreted the definition of "merchant" in Section 2-104(1) as including only professional traders and not farmers.

COMMENT

Although the court may not have been accurate when it determined that a farmer is not a "merchant" within the definition of Section 2-104(1), its decision may still be regarded as correct if the policy of giving special treatment to farmers and farm products set forth in Article 9, Sections 9-109, -307(1) and -401, is considered applicable to farmers under other Articles as well.

It is suggested, however, that all farmers may not deserve equal treatment since many men engaged in farming are now professionals within the meaning of Section 2-104. See Section 2-104, Comment 2. To these farmers, the provisions of Section 2-201(2) should be applicable.

H.A.H.