

Young, and others, already named, and that he acquiesced in what Kent was doing.

Then what would be included in the word "timber" in the contract between Kent and Casselman? In *Corbett v. Harper*, 5 O. R., the learned Chancellor said, at p. 97: "In this country I apprehend the term 'timber' would be properly applicable to whatever trees are used in building or the mechanical arts. Timber primarily means, 'wood fit for building.' See Latham's English Dictionary. In the Imperial Dictionary it is described as that sort of wood which is squared, or capable of being squared, and fit for being employed in house or ship building or in carpentry, joinery, etc. In *Nash v. Disco*, 51 Maine R. 417, the Court adopt as correct Webster's definition as that sort of wood which is proper for buildings, or for tools, utensils, furniture, carriages, fences, ships, and the like. And it is there said that in a contract for the purchase of timber no title would be acquired by the purchaser to trees not suitable for any purpose but for firewood."

The Chancellor in his judgment adopts the rule of law laid down in *Aubray v. Fisher*, 10 East 446, and recognized in Ireland in *Dunn v. Bryan*, 7 Ir. R. Eq. 152, that when once a particular wood is ascertained to be timber it assumes the denomination of timber at twenty years' growth.

In *Whitty v. Dillon*, 2 F. & F. 67, it is said that only trees six inches in diameter or two feet in girth appear to be reckoned or considered as timber.

All trees of any kind which were saplings at the time of the sale in 1871 from Kent to Casselman, but which subsequently became timber, did not pass to the purchaser. And the trees which are only suitable for firewood, and which now form the principal wood on the property, could not be cut or removed by the defendant. In this country the pine, oak, cedar, whitewood, basswood, and ash, which in August, 1871, was twenty years old, the defendant would be entitled to cut, and may be removed within six months from the 1st day of November next.

There will be judgment for the plaintiff as to all the trees on the land suitable for cordwood, and for all spruce and tamarac, and for such of the pine, oak, cedar, whitewood, basswood, and ash as was not at the date named (1871) twenty years old. And there will be an injunction restraining the defendant from cutting or removing such named trees.

There will be a reference to a special referee, to be agreed upon by the parties, and, if not agreed upon, to be named by me, to ascertain what, if any, of the trees suitable for cordwood, or any pine, oak, cedar, whitewood, basswood, or ash,