

" the sellers, now lying above the rapids, near the Chaudière Falls, Ottawa River, and stated by said T. Durrell, to consist of 1391 pieces, measuring 50,000 feet, more or less, deliverable at Quebec, on or before the 15th June next, and payable by the purchasers' promissory notes, of ninety days date, from this date, at the rate of 9½d. per foot, measured off. Should the quantity turn out more than

To be delivered at M. B. Farlin's Booms, Sillery Cove, Quebec.	}	" above stated, the surplus to be paid for by the " purchasers at 9½d. per foot, on delivery, and should " it fall short, the difference to be refunded by the " Sellers. Signed in Duplicate.
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" Montreal, 3rd December, 1834.

(Signed,)

" HART, LOGAN & Co.

" LE MESURIER, ROUTH & Co."

The point at issue between the parties, was, whether the raft sold to the Appellants by the Respondents had been delivered according to the terms of their contract, and whether the loss of the same was to be cast on the sellers or on the purchasers : in other words, what constitutes a delivery at law, under a contract as the one above stated.

Extracts of the case of the Appellants :

" The Judgment of the Court below, was, that the Appellants' action be dismissed, and that the Respondents should recover £140 10s. 5d.

After due consideration of the proof on both sides, it will be found—

1stly. That the raft did not arrive in the neighbourhood of Quebec until the 19th of June, (instead of the 15th.)

2ndly. That it never reached Farlin's Booms, at Sillery Cove, but was wrecked at Convent Cove.

3rdly. That, independently of the legal but unfulfilled obligation of the Respondents, to deliver at a certain time and place, their agents were guilty of gross laches, and want of diligence.

4thly. That, had the said raft arrived at the stipulated time and place, it could and would have been secured, and measured off, to constitute a valid delivery.

On these, which are the leading facts in the suit, the Appellants would found the following legal propositions, as decisive of the merits of the case, and entitling them to a reversal of the Judgment of the Court below, with such degree of relief as this honorable Court shall deem lawful and just:—

1st. That, upon the sale of goods by admeasurement, which are destroyed before measurement, the loss is cast on the seller.

2ndly. That the stipulations of admeasurement, and of delivery at a particular place, render the sale conditional, and incomplete until the occurrence of those events ; and that in the meantime, the *periculum rei vendite* is not to be borne by the purchasers.

3rdly. That, after the expiration of the time fixed for the delivery, the purchaser is not bound to receive the property, the contract having been determined by the seller's breach of its conditions.

4thly. That in the performance of all commercial contracts, punctuality is required, the rule of the civil law, "*Dies interpellat pro homine*," being strictly applicable to them.

5thly. That, when the vendor, in such cases, is in *morâ*, according