

Upon measuring the whole of the timber it was found to contain

12,770	ft.	Pine,	
16,137	do.	Oak,	
3,101	do.	Elm,	
<hr/>			
32,008	at 1s.	£1600	8s. 0
Deduct Paid		£800	0 0
		<hr/>	
		£800	8s. 0

After the Respondents made the necessary arrangements for the building of a fleet upon Lake Champlain, Peace was concluded between His Majesty's Government and the United States of America. The building of the fleet was countermanded; and, to indemnify the Respondents for the expenses which they had incurred, Government agreed to take off their hands, at a liberal price, the large collection of materials which they had made. And the lot of timber in question was accordingly delivered over by the Respondents to the proper officers of His Majesty, at St. John's. The arrangement made by the Respondents with His Majesty's Government was not concealed by them and easily reached the ears of the Appellant. The Appellant who had failed in the fulfilment of his contract and was liable to an action of damages on the part of the Respondents; who after such failure had been present at the measurement of his timber in a way totally inconsistent with the idea of its being received under the contract; and to whom was offered, what is proved to have been the full value of the timber and what was considered to be so by a person acting as his agent; conceived the strange idea of recovering from the Respondents the full amount of the contract price.

To bring the claims of the Appellant to a speedy termination the Respondents consented to a reference to arbitration. And the award of the arbitrators not realizing the visionary hopes of the Appellant he brought his action against the Respondents.

The declaration contains two Special counts, the first stating the contract to be a written contract, the second a contract by parole. These Special counts are followed by the common counts for goods sold and delivered; *quantum valebant*; the money counts, and an account stated.

The Respondent pleaded:

1. The general issue.
2. A plea of payment of all and every the sum and sums of money which were due and owing from the said James M'Douall, and John Goudie to the said Daniel Ayer.
3. The arbitration bond and award made in virtue thereof.

A general Replication was filed by the Appellant to the plea of general issue.

To the third plea the Appellant,

1. Demurred, and pleaded,
2. *Non est factum*, to the Arbitration bond.
3. A general answer.
4. No award made.
5. Illegality of award, by reason of misconduct in arbitrators in refusing to hear more than two witnesses on the part of the Appellant; in hearing Witnesses, who were not sworn; and in making their decision to depend upon the tossing up of a copper.

The

Upon