

Chief Justice, I feel myself obliged to bend to a statute which I cannot endorse, and to concur in the decision of the Court.

Hearn, Jordan & Roche, for the appellants.

Alley & Alley, for the respondent.

(I. T. W.)

CIRCUIT COURT.

Quebec, December, 1866.

ROCHETTE v. FORGUES.

Practice—Taxation of Witness.

Held, that any one in public employ is entitled to be taxed as a witness; and if he is a professional man, he must be taxed at the rate which the tariff allows to practising members of his profession.

This was a case which arose out of an objection made to the taxation of M. Leprohon as a witness. If taxed at all, it was urged that he should be taxed simply as a clerk, and not as an advocate; on the ground that being a member of the civil service he lost nothing by attending at Court as a witness; and if he did lose anything, his time should simply be valued as that of an ordinary clerk and not as that of an advocate, inasmuch as he did not practise his profession.

MEREDITH, C. J. This objection has often to my knowledge been urged before, and being anxious now to settle the question, I have consulted with my brother judges to find out their opinion upon it, and we have come to the conclusion, that any gentleman in public employ, attending Court as a witness, ought to be taxed as any other witness is, and if he happens to be a professional man he is entitled to taxation as such; for otherwise some of the most eminent professional men who have ceased to practise, would only be allowed 7s. 6d. a day for giving attendance here, to the detriment of what may be far more important business to them, while others, with half their claim, would receive \$4.50.

Taxation ordered accordingly.

(I. T. W.)

SUPERIOR COURT.

MONTREAL, Nov. 30, 1866.

BENSON v. MULHOLLAND AND ANOTHER.

Sale—Deduction for damaged goods—Guarantee as to condition.

The plaintiff sold to the defendants, through a broker, a quantity of iron, which the defendants sent a clerk to examine, and test the quality of, before completing the purchase. Nothing was specifically stated by the broker as to the condition of the goods, but he sold them as in good order. Subsequently part of the iron was found to be rusty and damaged.

Held, that the plaintiff sold the iron as merchantable and in good order; and that the examination of the quality, made by the defendants, did not debar them from their right to claim a deduction for the damaged condition of the goods.

This was an action for \$448, for goods sold. The plaintiff set out that he, by and through the ministry of Brady, a broker, acting in that behalf for the plaintiff and defendants, at Montreal, on the 31st of August, 1865, contracted and agreed with the defendants, and the defendants contracted and agreed with the plaintiff, to buy and receive from, and to pay for to the plaintiff; and the said plaintiff by the ministry aforesaid did sell, and the defendants did purchase from the plaintiff, the following quantities of iron, and at the following prices, [here followed a list of the bundles of hoop and bar iron] in all £112, payable six months after said date. Whereupon the said Brady, in due course, delivered the usual broker's notes to the said parties, plaintiff and defendants, to wit, the sold note to the plaintiff and the bought note to the defendants. That the plaintiff, under said contract and agreement, in due course delivered to the defendants the said quantity of iron, which was by the defendants duly received, but they, although bound as aforesaid by the said contract to pay for the same, had neglected and refused so to do, although the term of credit allowed by the contract had expired.

The plea admitted that the defendants purchased from Brady, acting as broker for and on behalf of the plaintiff, the quantity of iron mentioned in the declaration; but alleged that at the time the purchase was made, the plaintiff, and said Brady, as such broker, repre-