

Now that has little resemblance to a contract for the construction of a carriage or the building of a ship. In such case the price, if paid in advance, goes into the common fund, and is applied in carrying on the general business of the manufacturer. There is no appropriation of it to any particular work. But here the agreement expressly appropriates the sums paid to the fulfilment of this particular contract. Could the defendants, neglecting to carry on the work, have claimed the instalments? Assuming the logs to have been cut and carried to a certain point, and then sold, could any further instalments have been claimed? I apprehend not. The contract is an express appropriation of the money to be paid, and amounts to an agreement on the part of the defendants to apply it as received to the fulfilment of the plaintiff's contract.

1854.

Fuller
v.
Richmond.

What, then, did the parties to this agreement intend? Did they intend that the property in these logs should remain in the defendants until delivery, to be disposed of by them at their pleasure up to that moment? I apprehend not. Contracts of this sort occupy, of necessity, much time. The logs are cut and hauled during the winter, and are driven down the stream at high water in the spring. That is a tedious and very expensive process. It occupied in this instance several months. Now, can it have been the intention of these parties that the plaintiff, paying these large sums from time to time during this long period for the transport of these very logs, was to remain up to the last moment at the mercy of the defendants? That, in my opinion, was not the intention. The contract expressly appropriates the monies paid by the plaintiff, first to the preparation of certain logs for his use; then to the transport of the logs so prepared to the place of delivery. Now that necessarily involves the appropriation of the logs so prepared and transported to the plaintiff's use.

Judgment.