

Now the plaintiff's action, as set out in his declaration, was simply for work and labor, and particularly for remeasuring with a string the mentioned quantity of timber, at \$1.50 per M. feet. The defendants denied their liability, and specially alleged that plaintiff was a licensed culler, had been duly deputed to measure the timber and had done so; that the regular charges therefor had been duly paid into the Supervisor's office, and that as such licensed culler he could not by law claim in his own name any money for measuring by string the defendant's timber. To this the plaintiff replied that he did not claim as a culler for the work done; 2d, that he had measured the timber with string at the defendants' request *after it had been measured by 'Calliper,'* and after it was so entered in the supervisor's books, and concluded that he was by law entitled to be paid for the services by him performed distinct from his quality of culler.

This special replication entirely changes the original ground of action, and offers issues different from the assumpsit counts of his declaration. But considering the issues as thus raised of record, three points present themselves: 1. That he had no claim for the work if done in his quality of a licensed culler; 2. That his string measurement was made after the completion by him of the statutory measurement by 'Calliper'; 3. That these services performed by him were distinct from his quality of culler. Now, by setting out these facts the implication of law which he offers is that if these facts are not so as stated by him he can have no right of action. Now it is proved in evidence that he was paid for what he did as a licensed culler, and that the string measurement was made by him *at the same time* as that by "Calliper." His action therefore ought to have been dismissed in the Court below.

The foregoing remarks have been confined to the facts of the case, but if the action be considered in connection with the statute, the same result will be arrived at. In this connection it must be observed that the two measurements were simultaneous, that they were performed by the same person, the plaintiff, a licensed culler duly selected by the Supervisor to perform a legal duty, and that the lumber

had not been previously measured by any licensed culler. The 36th sect. of the Statute, Ch. 46 C. S. C., (An Act respecting the culling and measurement of lumber), provides "that any culler licensed under the act, and not employed by the Supervisor, may engage or hire himself to merchants, or others, as a shipping culler; but such culler shall in no case measure, cull, count, stamp, or mark any description of lumber, before the same has been first measured by some licensed culler other than himself, under the direction of the Supervisor, except by the written permission of the Supervisor, &c., &c.; and any culler so hired and engaged, offending against this act shall incur a penalty not exceeding \$400, or imprisonment, &c." By the 37th section, it is further provided that "any culler employed by the Supervisor, who shall privily, and without the knowledge and consent of the Supervisor, or for hire or gain, and without the same being duly entered on the books of the Supervisor, measure, cull, mark or stamp any article of lumber, shall incur a penalty not exceeding four hundred dollars, or imprisonment for a term not exceeding six months, in the discretion of the Court, for each such offence."

These enactments are conclusive against this licensed culler, the plaintiff in the cause. The penalties are prohibitory, and prohibitive laws import nullity, even although such nullity be not therein expressed. The respondent's action ought to have been dismissed by the S. C., and the appellants' appeal must be maintained.

DUVAL, C. J. In concurring with this judgment, I bend to a statute of which I cannot approve. The plaintiff has clearly done work at special request, for which he cannot obtain payment. The "Calliper" measure merchants will neither sell nor purchase by, and yet it is the only means of measurement recognized at the Supervisor of Cullers' Office. I am afraid that of the legislator who framed this law, it must be said—*Quod non voluit dixit*. I therefore concur in the judgment of the Court, though with great reluctance, as I consider it an injustice done to the plaintiff.

MONDELET, J. I was at first about to dissent from the judgment, but like the Hon.