

In a Cause between

DANIEL AYER, (*Plaintiff in the
Court below,*) APPELLANT,

AND

JAMES M'DOUALL, AND

JOHN GOUDIE, (*Defendants*

in the Court below,) RESPONDENTS.

CASE OF THE RESPONDENTS.

IN the year 1815, the above named Respondents having contracted with his Majesty's Government for the building of Frigates, and other armed Vessels, to navigate Lake Champlain, entered into a number of contracts with lumber dealers, for the obtaining of a large quantity of timber of various descriptions to enable them to accomplish their engagements.—Amongst others, they contracted by written articles of agreement, bearing date the 1st February 1815, with the present Appellant, "for the delivery by him, unto them, at St. John's, into a yard to be pointed out by the Respondents, on the upper side of the garrison, or lower side, or in the garrison, at their option, of 10,000 feet White Oak Timber, 5000 feet White Elm Timber, and ten thousand feet of White Pine Timber; to be sound, good, and fit for the purpose of building Frigates, Ships, and Gun-boats, on Lake Champlain; and to be such Timber as should be approved by Mr. John Gill, as proper for that purpose, or any person he might appoint for the purpose of inspecting and measuring the said Timber, to be flatted or squared, and to be delivered in the following manner: that is to say, 10,000 feet in the yard appointed by the 25th February 1815, and the remainder of the whole quantity of 25,000 feet, on or before the first day of May (then) next, at the rate of two shillings per cubic foot for the Oak and Elm Timber, and one shilling for the Pine Timber."—To enable the Appellant the better to fulfil his engagement, the Respondents engaged to pay the probable amount of Timber hauled out each two weeks, until he should be paid £1000, and the balance when the delivery should be completed, on the 1st May 1815."

No. 15 of Record.

John Gill, the person named in the contract, was the person who inspected all the Timber used in the building of Vessels for His Majesty's Service on Lake Champlain.

In the course of the winter 1815, a quantity of Elm, Oak and Pine Timber was brought by the Appellant to the fort of St. John's, and deposited on the South side of that fort.

Moneys were advanced from time to time under the above clause of the contract, to the amount of £750 0 0, as follows:—

No. 7.—10th February 1815.....	£250	0	0
No. 12.—18th February 1815.....	250	0	0
No. 8.—25th February 1815, by Scofield	200	0	0
No. 9.— 2d June 1815	50	0	0
Blankets furnished in course of winter	50	0	0

In

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