

trict of Saguenay, A. B. Routhier, J.) which was confirmed in Review, was as follows:—

“ Considérant que la réserve faite en faveur du défendeur, dans les annonces de saisie-exécution en cette cause, de son droit de rétention sur l'immeuble saisi, “ pour toute somme qu'il peut avoir payée aux experts “ pour le demandeur,” est indéterminée, sans aucun montant fixé, et pour cette raison irrégulière et illégale;

“ Considérant en outre que ni la loi, ni le jugement rendu en cette cause, n'étendent le droit de rétention du défendeur à la créance qu'il peut avoir contre le demandeur pour sommes payées aux experts à son acquit;

“ Maintient l'opposition de Charles Angers, créancier du demandeur, et ordonne que la vente de l'immeuble saisi en cette cause ne soit soumise à la réserve du droit de rétention pour sommes payées aux experts, que si bonne et suffisante caution est donnée que l'immeuble sera vendu à un prix suffisant pour assurer au dit opposant le montant de sa créance, savoir : \$100, avec les intérêts; et si tel cautionnement n'est pas fourni dans un délai de 15 jours, la Cour ordonne que l'immeuble soit vendu libre de telle réserve ou charge.”

Jos. S. Perrault, for J. S. Perrault.

Charles Angers, for Charles Angers.

(J. O'F.)

SUPERIOR COURT.

SHERBROOKE, Jan. 31, 1887.

Before BROOKS, J.

KIPPEN V. STERLING.

Tender—Costs.

Where an action was instituted for \$300.38, and a tender of \$99 and costs, made before return, was held insufficient, and judgment was given in favor of plaintiff for \$126.50, costs were allowed plaintiff.

PER CURIAM. This action was for \$300.38, being for the balance of account alleged to be due to plaintiff for the rent of a certain saw mill property in Lennoxville, under three separate agreements; and several other items.

Defendant pleaded, denying the agreements as alleged by plaintiff with reference

to the mill, and produced a *contra* account against plaintiff, alleging that before the return of the action into Court, he had tendered \$99.00 and costs to plaintiff, which more than covered any balance due him, and bringing said amount into Court, and renewing the tender by his pleas.

The amount due for the mill, under the first agreement, is agreed upon at \$300.46. As to the second and third agreements, plaintiff has failed to prove the same as alleged by him; on the contrary, the weight of evidence is in favor of defendant's pretensions. The evidence of Wm. Mitchell for defendant, is reasonable as to the new agreement and is not contradicted.

Under the circumstances, I can allow plaintiff nothing more than is credited by defendant for the mill, with the exception of \$28, for sawing 28,000 feet of lumber which was done by Bond Little, about the middle of June, @ \$1.00 per 1000 feet,—\$28.00. It is evident this sawing is not credited, for Little says it was done after the middle of June, and that he sawed several days, and I find that credit is given by defendant for certain hours only, and in only one case, June 23rd, as many as six hours.

Plaintiff should also be allowed \$30.00 for the use of the grist mill, during said season, being one half the proceeds of grinding.

As to claims for extras, and counter claims for reductions, in connection with building plaintiff's house, nothing is allowed either party.

Adding the above items, plaintiff's account stands as follows:—

Due for mill under 1st agreement..	\$ 300.46
Sawing by Little, 28,000 feet @ 1.00.	28.00
Use of Grist Mill.....	30.00
Paid for Insurance.....	15.67
Drawing wood.....	22.75
Potatoes.....	5.40
Use of mill 144 hours, being 14 days and 4 hours, June 10th to Aug. 13th, @ 2.00	28.80
	\$ 431.08

Of defendant's account, plaintiff admits in his deposition \$275.83, and to this amount must be added \$28.75, the balance charged by defendant for roofing, which, under the