

1854.
 Fuller
 v.
 Richmond.

in pursuance of that contract. But this witness died, unfortunately, before the evidence in the case was taken; and the facts to which he deposed have not been proved by any other witness—are incapable, perhaps, from their nature, of proof *aliunde*. The evidence of *Robertson* too, who is also dead, is said to differ from his previous affidavit, and is certainly inconsistent to some extent with the case made by the bill, and with the statement made by *Craig* on the motion. But enough remains, in my opinion, to entitle the plaintiff to a decree.

This case has little resemblance to those cited in argument. This is not, perhaps, a contract of sale; it is rather a contract for the performance of work and labour on account of the plaintiff. The subject on which that labour was to be performed, the trees, was comparatively of no value. The right to cut them might have been obtained by the plaintiffs from the Crown at a price almost nominal. Their whole value consisted in the labour necessary to render them portable and to transport them to the point of delivery; and it was for that that the price was really paid.

Such being the nature of the agreement between the parties, let us look at the provisions of the contract. After stating the work to be performed by the defendants, it goes on to provide that "*Fuller*, in consideration of the above undertaking of the defendants, and in contemplation of the faithful performance of the above contract, doth promise and agree to advance the following sums of money for the performance of the said contract in part, on the days and times following, that is to say, the sum of £50, to be paid on the first day of December now next ensuing; and the sum of £100, to be paid on the 15th day of January now next ensuing; and the sum of £75, to be paid on the 15th day of each and every month during the performance of the contract."