

performing the work for which he now claims to be paid. He had previously, upon the order of the Supervisor of Cullers, measured the timber in question by "Calliper" measurement, and a proper return thereof had been made to the Supervisor's Office and entered in the books of the office.

It was then that the appellants required the respondent to re-measure said timber with a string, as by that measurement appellants sold said timber to Dobell & Co.; and it was absolutely necessary that it should be so measured in the interest of the defendants, so as to enable them to be paid by the purchasers of the timber, Messrs. Dobell & Co., who had bought it to be paid for by string measurement.

In the present instance the respondent did not infringe the law, or act in any way contrary to his duty as a licensed culler, inasmuch as he had performed the work imposed upon him by law, and made a proper return thereof to the office; and in measuring the timber afterwards with a string, he did that which it was necessary for the appellants to have performed in order to sell their timber, and which the Supervisor of Cullers or his office would not officially recognise.

BADGLEY, J. This action is for the recovery, by a licensed culler, of his string measurement, for which he was not paid, done simultaneously by him with the legal measurement by "Calliper," for which he was paid. The defendants had at Quebec a raft of timber which required necessarily to be measured and specified through the Supervisor's Office. They held over, however, making their application to the Supervisor, until the plaintiff's turn for service should come on the office roll, in order to serve him, by giving him a considerable job. He was in due time appointed to the service, and performed the duty by the legally recognized official *calliper* measurement, which he duly reported at the office, and for which he received his full payment; but whilst so employed in this official measurement, he also made the string measurement which he did not report to the office, the payment of which he now claims from the defendants.

According to law and to the enactments of

the statute in that behalf, all timber arriving at Quebec must be measured for shipment, and the measurement is required to be done by a licensed culler whose name stands on the Supervisor's list or roll, and who is named to that duty by the Supervisor, when demanded by the owner of the timber. The statutory measurement is by "Calliper," and the results of that measurement, when completed, must be returned to the office of the Supervisor, by whom the specifications of quantities are drawn, and verified by the measuring culler himself. No other measurement is recognized by law; the rates for the measurement are fixed by the statute, and are required to be paid into the office, where the culler is paid therefrom for himself and his assistants, so that no possible collusion could take place between the owner of the timber and the measurer of it.

The defendants procured the plaintiff's service for the measurement as above stated: his order from the office was dated on the 5th September, and was returned to the office with his work done on the 13th October following, and thereupon the specifications were made. The office fees paid by the defendants amounted to £100, of which the plaintiff received £64. No particular time was limited for the doing of the work, which was paid for by the tariff according to the quantity measured. The legislature requires that the measurement should be made by Calliper, and recognizes none other as statutory; the trade sometimes uses the string measurement (*au cordon*), which does not necessitate the act of a licensed culler, and might be made by any competent person. The plaintiff as a licensed culler made the Calliper measurement, and *simultaneously* with that made the string measurement. The Calliper measurement was for the requirements of the law, the string measurement for the requirements of the trade. If the latter were made independently of the former, and after it had been done and returned to the office, it would of course not be obnoxious to the statutory penalties, because in that case the law had been complied with. String measurement then in itself was not illegal, and only became so under particular circumstances.