

a case to take into their consideration that the person charged has declined absolutely to return to the service, and punish him once for all." *Unwin v. Clarke*, Law. Rep. 1 Q. B. 417.

## LAW JOURNAL REPORTS.

### COURT OF QUEEN'S BENCH (APPEAL SIDE).

Quebec, December Term, 1866.

*Coram*—DUVAL, C. J., AYLWIN, DRUMMOND, BADGLEY, and MONDELET, JJ.

COOK ET AL., (Defendants in the Court below) Appellants.

VERRAULT, (Plaintiff in the Court below), Respondent.

#### *Licensed Culler—Measurement of Timber.*

*Held*, that a licensed culler, employed by the Supervisor, cannot recover payment for any other measurement of timber than that directed by the statute, even when specially directed by the owner of the timber to measure it in some other way.

This was an appeal from the final judgment rendered in the cause by the Circuit Court, at Quebec, on the 25th April, 1866, by which the appellants were condemned to pay to the respondent \$130.40, with interest and costs.

The respondent's action in the Court below was for work and labor, and, more particularly, for the re-measuring with a string 1,156 pieces of waney white pine timber, containing 86,933 feet, at \$1.50 per thousand feet.

The appellants pleaded a denial; and that respondent, a duly licensed culler, and attached as such to the Supervisor's Office, had been deputed by the Supervisor to measure such timber; that the charges therefor had been paid to the office; and, moreover, that respondent could not by law claim in his own name any sum of money for measuring appellant's timber.

In answer to the above plea, respondent replied, that he did not claim in his quality of culler to be paid for the work done; but that he had re-measured said timber with a string at appellant's request, after it had been duly measured by "Calliper," the only measurement known to the Statute, and the measurement entered on the books of the Supervisor

of Cullers, as required by law; and that he was entitled to be paid for his services performed, wholly distinct from his quality of culler, and not according to the requirements of the statute respecting the measurement of timber, but for another purpose altogether.

The respondent's evidence established the work done, and the value.

It was proved that the only mode of measurement of waney timber recognised by the Supervisor's Office is the one styled "Calliper" measurement, and the Supervisor will not authorize any other mode; nor will he allow to be entered on the books of his office the dimensions of waney timber taken by any other kind of measurement. In his deposition, the Supervisor said:—"If a culler, or any other person, came to my office with the dimensions of waney timber, measured with a string, by string measurement, in order to have the same entered on the books of the office, and a specification thereof made, I should refuse to receive it." It was proved in the case that, although "Calliper" measurement is the one adopted by the Supervisor's Office, and the one which all owners of waney timber must first have performed, in order to comply with the statute and the rules of the Supervisor's Office, yet the trade at Quebec prefer for waney timber the measurement known as "string" measurement; and such timber is nearly always sold by "string" measurement. This was why the appellants engaged the respondent's services to re-measure the timber, which he had previously measured, according to the rules of the Supervisor's Office, by "Calliper" measurement.

*Hearn*, for the appellants, urged that the respondent's action in the Court below ought to have been dismissed, as under Cap. 46, C. S. C. (An Act respecting the culling and measuring of timber), he being a licensed culler in the employ of the Supervisor, not only could not recover payment for the measuring which he claims to have done, but was subject to a penalty of \$400, for having done it without the knowledge and consent of the Supervisor, who alone has the right to sue for payment for work done by the cullers in his service.

*Alley*, for respondent. There is nothing in the law to prevent the respondent from.