

writing, was "to be of good quality, and to be accepted at Belœil," thence to be forwarded to New York on defendant's own boat. At Belœil defendant pointed out to plaintiff, on the barge on which the lumber was laden, a quantity of culls which had been set apart on the deck, and objected to them. Plaintiff, according to his evidence, answered, "do the best you can with them," meaning, as he explained, that a small amount of lumber was nothing, in a quantity like the total amount sold; but he also asserted that he had refused to modify the contract, or to accept inspection of the lumber at New York. Defendant then paid \$775 on account, and carried the lumber, including the culls, to New York, where the whole was sold. Defendant claimed that the contract had been modified, so as to make the lumber subject to inspection at New York.

*Held*, that the evidence of plaintiff did not justify the admission of parol evidence to show that the original contract, by which the lumber was to be accepted at Belœil, had been abandoned, or varied, so as to entitle the defendant to treat the entire cargo as sold subject to inspection at New York.—*Cross et al. v. Bullis*, Montreal, in Review, Johnson, C.J., Tait and Davidson, JJ., December 30, 1892.

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SUPERIOR COURT.

SHERBROOKE, Jan. 31, 1893.

*Coram* BROOKS, J.

MOORE v. JOHNSTON et al.

*Possessory action.*

**HELD**:—1. *That title can legally be pleaded to a possessory action in respect of lands held in free and common soccage in the Eastern Townships.*

2. *That a holder by sufferance is without quality to bring a possessory action.*

3. *That the proof in the present case establishes that the possession of the plaintiff was not ANIMO DOMINI, but rather a possession by tolerance and sufferance of the real owner.*

BROOKS, J.:—

This is a possessory action to recover possession of the north-west half of the south west half of lot 17 range 10, Windsor, coupled with a demand for \$2,000 damages.