

determine was whether Mr. Hopkins was entitled to his *quantum meruit*, or only to the \$50. It was contended in the plea that the congregation had reserved the right to reject the plans. The Court, however, had arrived at the conclusion that Mr. Hopkins was entitled to his *quantum meruit*. He was restricted to a certain price, and it was fully established that this restriction involved a great deal of extra labour and care. The defendants contracted with Mr. Hopkins that if he sent in plans which were satisfactory, he should have the work. He sent in plans accordingly, but the defendants accepted other plans which were not at all in conformity to the conditions. In doing this they violated the contract, and thus put an end to honest competition. If there was no competition, what remained? Why, the plaintiff must recover the value of his services, which were proved to be equal to one per cent, amounting to \$320, for which he would have judgment, with costs.

*H. Stuart, Q. C.*, for the Plaintiff.

*S. Bethune, Q. C.*, for the Defendant.

#### BERTRAND v. BRAIS.

##### *Pilot—Negligence.*

MONK, J. This was an action of damages against a pilot, brought by the captain of a barge. The plaintiff had a barge loaded with eighty-four cords of wood at the Cedars, and he sent for the defendant and asked him whether he would agree to pilot him through the rapids. It was contended by the plaintiff, in the first instance, that Brais had come to him and offered his services, and that an express agreement was then entered into, that the defendant was to take the barge through the rapids for \$4. As a matter of fact, the defendant did take charge of the barge on the 15th July. They left the Cedars about three o'clock in the afternoon, the weather being fine, and got well through the first rapid. Then the question arose as to going through another rapid. Brais did not follow the course he had taken on previous occasions, but attempted to take another channel, and the upshot was that the barge struck, the wood was thrown overboard, and the barge was considerably damaged. Now, the captain brought

an action against the pilot for the value of the wood and for the cost of repairing the barge. The defendant said he never undertook to guarantee the plaintiff; and, in the next place, that the plaintiff refused to cast anchor when he told him. The first question the Court had to determine was, whether there was a contract—whether the pilot entered into a contract to pilot this barge through the rapids? It was contended that there was an implied contract to this effect, and for this reason, because on two occasions previously the defendant had piloted the plaintiff's boat down for the same sum. His Honor had come to the conclusion that there was an implied contract. Brais must be looked upon as a professional man, and held responsible for any neglect or want of skill. The duty of a pilot was to know his business well, and to exercise all possible diligence. First, as to the defendant's skill, the testimony was unanimous and conclusive. On the second point—whether he had exercised all the diligence that could be exercised—the Court had had a great deal of difficulty. The first feature to be noticed was that he did not go down the channel which he had gone down twice previously in safety. The case looked as if there had been a want of proper care, as if there had been negligence. The defendant was bound to exercise the utmost diligence. It was said the captain had absolved the pilot from the consequences, when he refused to anchor. Stated as a general principle, this was true; but we must look at the position of matters. The vessel at the time the order was given, was bounding over the rocks. There would have been great danger in casting anchor. His Honor was clearly of opinion that the order to cast anchor came too late, and that no captain, with the responsibility on him of the life of his crew and of himself, and the safety of his cargo, would have been justified in obeying such an order at such a juncture. The pilot must be held responsible, but in what amount? The plaintiff claimed the value of the repairs, and of the wood. This was too much. The evidence showed that he was in too great a hurry in throwing out the wood. He might have saved it. The pilot would not be held liable for the cargo, but he must pay