

## SCAMMELL v. CLARKE.

## TWO CASES.

1894

\*Feb. 21,  
22, 23.

\*May 1.

*New trial—Improper reception and rejection of evidence—Nominal damages.*

APPEAL from decisions of the Supreme Court of New Brunswick (1) in favour of the respondent Clarke.

Clarke brought an action for the price of timber supplied to Scammell under a written agreement which was defended on the ground that the timber was not of the quality contracted for. The plaintiff having obtained a verdict a new trial was moved for on a great number of grounds only two of which were relied on in argument. The rule for a new trial was made absolute unless the plaintiff filed a consent to his verdict being reduced and such consent being filed the rule was discharged and the verdict stood for the reduced amount.

Another action was brought by Scammell against Clark for damages in not supplying timber up to the standard the contract required. In this action a verdict was given for the defendant and a new trial was moved for the main ground urged being that plaintiff was entitled to nominal damages at least. The court was of opinion that the plaintiff was entitled to nominal damages, but refused a new trial to enable him to have a verdict therefor. Scammell appealed from both decisions to the Supreme Court of Canada.

Both appeals were dismissed the Supreme Court being of opinion that the objections to the verdicts for

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\*PRESENT :—Fournier, Taschereau, Gwynne and Sedgewick JJ.

(1) 31 N. B. Rep. 250, 265.

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improper reception and rejection of evidence were properly overruled by the court below and the new trial to enable Scammell to recover nominal damages was properly refused.

*Appeals dismissed with costs.*

*Palmer* Q.C. for appellants.

*W. B. Wallace* for the respondent.

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