#### Vogan *vs.* Barrier *et al.*

This court vriH not disturb the verdict of a jury where nothing appears upon the record of the proceedings at the trial, except conflicting evidence upon a question of fact submitted to, and passed upon, by the jury; and the finding of the court below upon a question of fact will be regarded in the same light as the verdict of a j'«7-

Avpkai. from the superior court of the city of San Francisco. The facts are stated in the opinion of the court.

*Wilson Shannon,* for the plaintiff.

*N. Hubert,* for the defendants.

*By the Court,*

Lyons, J.

This suit was instituted for the recovery of the price of certain lumber which plaintiff alleges, [\*187](#p187)defendants, 'without his knowledge or authority, toot and carried away, and converted to their own use. Defendants, denying these allegations, aver that they purchased of plaintiff the lumber at a stipulated price, and the questions presented by the pleadings are solely as to the price of the lumber per thousand feet, and the manner in which the same should be computed, whether by superficial or running measurement.

Testimony is introduced to prove the contract between the parties,-—to prove the value of lumber at the time of the transaction, and also to-«how what is the custom of measurement with lumber dealers. The case throughout presents nothing but questions of fact, which it is the peculiar province of juries to pronounce upon. The court below sitting as a jury has so pronounced, and we see no sufficient reason to disturb its judgment.

Judgment affirmed.