

On the 15th December, 1910, the plaintiff wrote to the defendant that he had decided to accept the amount the defendant had offered him, \$3,315, in settlement, provided that he should have also some posts and shingles described in the latter; that sum, with the amount already paid on account of the contract, amounting to \$8,315.

A very careful examination of the whole evidence satisfies me that in the making and accepting of the offer of this amount each of the parties knew pretty accurately the true amount which was really due from the one to the other; that in truth the sum so due is the amount mentioned in that letter; and that any number of references, and the waste of any amount of additional costs, could not rightly lead to any better conclusion.

For the order made in the Divisional Court I would substitute one directing judgment for the plaintiff for \$3,315, with interest from the date mentioned; with costs to be paid as already adjudged; but without costs of this appeal: when parties to an action have left the subject-matter of their litigation so tangled or uncertain that the interposition of the Court is needed to make plain that which they should have themselves made plain, neither party, whether winner or loser, or partly each, can well complain if part of the costs falls on him.

GARROW and MAGEE, JJ.A., and LENNOX, J., concurred.

MACLAREN, J.A.:—The judgment will be varied (the parties consenting that this Court dispose of the whole case without application to the Court below for further directions); the plaintiff to recover the sum of \$3,315, with interest from the 15th December, 1910; no costs in this Court or in the action up to the judgment of reference; costs of the reference to the defendant; other costs disposed of by paragraph 7 of the judgment of the Chancellor and by the Divisional Court to stand.

Judgment accordingly.