

to be paid. The omission to keep track does not disentitle the contractor to be paid—although it would justify the architect in allowing as little as he could.

From a perusal of all the evidence I can see nothing to indicate that the architect acted other than honourably, nor is there any indication of collusion between architect and contractor. Under these circumstances the certificate of the architect must be final.

Moreover, the finding of the trial Judge that the delay was caused by the owner himself, I think is wholly justified, as are the other findings made by him.

I think the appeal should be dismissed with costs, but with a direction that the costs to be allowed Burnham in his judgment against Vineberg are to be costs on the Division Court scale without a set-off, the costs of the appeal to be on the scale of an appeal to the High Court from a Division Court judgment. In other words Burnham is to be put in the same position as though he had brought his action in the Division Court, but that Vineberg should pay on the appeal costs as though he had unsuccessfully appealed to the Divisional Court from a Division Court judgment.

HON. SIR WM. MULOCK, C.J.Ex.D.,

MAY 31ST, 1912.

FOX v. ROSS.

3 O. W. N.

*Trespass to Lands — Injunction — Title to Land — Grant from Crown — Question if it Covered Island Adjoining Main Land — Title by Possession — Damages for Trespass — Failure to Establish Title.*

An action by plaintiff, who claimed to be the owner in possession of the westerly part of Cotter's Island, said to be also called Bernhard's Island, situate in the Bay of Quinte, in the County of Prince Edward, for an injunction against trespassing and damages for trespass by defendants.

MULOCK, C.J.Ex.D., held that the land in dispute was not covered by the Crown Patent to plaintiff's predecessors in title and that plaintiff had no paper title thereto. That plaintiff had failed to establish a title by possession and action should be dismissed with costs.

Plaintiff claimed to be the owner in possession of the westerly part of Cotter's Island, said to be also called Bernhard's Island, situate in the Bay of Quinte in the county of Prince Edward, and complained that the defendant had tres-