

have been entitled to if plaintiff had himself completed it. The engineer expected that it would cost the defendants more to complete than if plaintiff had completed, and he intended to charge plaintiff with the difference, and that is practically the situation which plaintiff must accept, and that is fair to the plaintiff.

I find that the plaintiff is not liable to the defendants for damages for non-completion of the work within the time specified, and that the plaintiff is entitled to be paid for the work actually done by him, of which the defendants have got the benefit.

There is no difficulty in this case in arriving at the amount.

The plaintiff cannot, in my opinion, be liable, in any view of the case, for cost of filling up the upper end of the cut, near the east end of coffer dam. No case has been made for such liability.

I find that the plaintiff is not liable for any damages by the flood in the spring of 1908, when water went over embankment, east of waste weir, and carried away the filling which had closed the gap which formerly had been there. He is not liable for the damage, if any, to the bank to the west of the power-house, as the defendants had taken upon themselves the doing of anything there.

A great deal of evidence was given about defective work, but, after all, the defects are comparatively few. Witnesses for defence say it is a fairly good job; apart from some particular defects in power-house, the work was fairly well done. Special complaint was made that large stones were put in, some too large for 14 inch casing, and some too large for 18 inch.

It is admitted by plaintiff that a mistake did occur, but only once, in not noticing the specifications prohibiting larger stones than 8 inch in the 14 inch. He says that, apart from one occasion where a man did not obey orders and was discharged for such disobedience, these larger stones were not put in.

It is almost inconceivable that with the clerk of works and inspector on the work, with members of the council keeping close watch as the work progressed, and with the engineer, who says he was kept well in touch, the work can be to any considerable extent inferior by reason of stones larger than specified going into the work. Some of the alleged bad work was from improper reinforcing iron. The