

LEGAL

In the action for damages brought by the Metallic Roofing Co., of Toronto, against Local Union No. 30, of the Almagamated Sheet Metal Workers' International Association, Mr. Justice McMahon has decided that the officers of the local union are properly qualified to represent the other members of the local union, under rule 200. "That rule gives no power to order that the officers of the local union shall represent the other persons constituting the association, which is a foreign body, having its headquarters at Kansas, and under whose jurisdiction the whole of the local unions in the United States and Canada are placed." Order made that the individual defendants shall represent the other members of the local union. Costs in the cause.

Curiously enough the British Workmen's Compensation Acts which are mainly concerned with accidents to workmen, do not contain a definition of the word "Accident". A recent decision of English courts, however, gives us the legal interpretation placed upon it by the courts. A case which turned on the meaning of the word (Fenton v. Thorley & Co., Ltd.) was decided recently in the British House of Lords. Owing to some defect in a machine, a workman was injured in endeavoring to make it act. The County Court judge held there was no accident arising out of and in the course of the employment. The same view was taken in the Court of Appeal. Lord Macnaghten objected to the belief which prevailed in the Courts that there must be something fortuitous in the circumstances in order to constitute an accident. A workman acted stupidly and was injured, and unless serious and wilful misconduct could be proved he obtained compensation. Another did his very best, acted with energy and thoughtfulness: he was declared to be outside the Act, as the fortuitous element was wanting. His lordship considered the word "accident" should be interpreted in the ordinary sense. In conclusion he moved that the decision of the Court of Appeal and of the County Court judge be reversed, with costs in both Courts, and that the action be remitted to the County Court with a direction to the judge to ascertain the amount of compensation to which the appellant is entitled.

The general practice in building, that if the employer is dissatisfied with the manner in which a contractor is carrying out his work he may, after due warning, engage any other person to complete the work, has been once more upheld in Scotland. In a case lately heard, says the Builders' Reporter, the plaintiff was accepted for a contract to carry out the joinery work in three blocks of buildings. He claimed £210 19s. for work in connection with the buildings, and also £500 as damages for breach of contract in respect of the architect having taken the contract out of his hands after the roofs of the buildings were on. The owner of the buildings, who was the defendant, stated that he was willing to pay whatever sum the architect might certify to be due. The position he took up with regard to the claim of damages was

that the architect had power under the contract to take the contract out of the contractor's hands, and that he was justified in doing this owing to his dissatisfaction with the progress made with the work. The claim for work done was referred to an independent architect, who fixed the amount at £187 19s ½d. This sum was awarded to the contractor. The claim of £500 damages for cancelling the contract was dealt with at some length. The Sheriff-Judge, in his decision, found that the plaintiff was not entitled to damages for the following reasons;— That he did not fulfil the terms of the contract, but that at several stages of the work, in consequence of his materials not being forward, he caused serious delay and inconvenience to the other tradesmen, especially to the mason, and retarded the progress of the work. After several delays caused by the pursuer, it became apparent that he was not carrying on his work in such a way as was compatible with its being finished at the earliest possible date; that the defendant's architect, after reasonable warning, wrote to the plaintiff intimating that the contract was taken out of his hands; that the architect was justified in terminating the contract. The case exemplifies the disadvantages of splitting up the contract, for the speed of progress is thereby regulated by the slowest. For instance, the mason had to take his men for three weeks from the walls owing to the absence of joists. The delay about the joists was caused to a large extent by the plaintiff supplying joisting of an inferior quality to that which was specified. According to Mr. Morton, the wood merchant, he ordered joisting of a grade inferior to that specified, and at a price at which the specified quality could not be supplied. There was a similar delay when the walls were ready for the second-floor joists. The ceiling joists were not even ordered from the timber merchant at the stage when it was usual to lay them. The evidence was overwhelmingly against the plaintiff, and the decision could not do otherwise but reflect that fact.

The builders of high chimneys in Germany are now using a mortar composed of a mixture of cement, lime and sand (in the proportions of 1, 2 and 6) for the upper portion of the chimney stack, where the gaseous products of combustion of the fuel are comparatively cool; while for the lower portions of the stack the proportions are 1, 2½ and 8. If the lime is hydraulic the proportion of the cement may be reduced; but if the sand is very sharp the proportion of cement must be increased. For the cap of a tall chimney stack the proportions of the ingredients of the mortar may be altered with economy and advantage. In German practice the mortar is composed of cement, lime and sand; in the proportions of 1, 1 and 4. Mortar made of cement and sand alone is not at all suitable for tall chimney work, because it does not resist the action of heat well and is attacked by carbon dioxide, of which there is always a large quantity present in the fine gases; this is especially the case in the presence of moisture, and, of course, steam is always present in the gases found in a smoking chimney.

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