

held the service and payment of security were valid and a substantial compliance with the requirements of the Statute.

Appeals dismissed with costs.

Prince County P. E. I.

Peters, Q. C., for appellants.

Morson, for respondent.

Annapolis, N. S. }

Shelburne, N. S. }

Lunenburg, N. S. }

Antigonish, N. S. }

Pictou, N. S. }

Inverness, N. S. }

McCarthy, Q. C., & J. A. Ritchie, for
appellants.

G. T. Congdon for respondents.

Ontario.]

ROSS V. BARRY.

Contract—Construction of railway—Standard of quality—Evidence.

McC. and R. were the contractors for the construction of a part of the Grand Trunk Railway, and sublet the masonry work to B. & S. In a conversation between McC. and S. before B. & S. began their work, S. understood that the second class masonry in his contract was to be of the quality of that of the "Loop line", another part of the Grand Trunk Railway road, and prepared his materials accordingly on receipt of a letter from McC. instructing him to carry out his contract "according to the plans and specifications furnished by the company's engineer". After a small portion of the masonry work had been done the sub-contractors were informed by the engineer in charge that the second class masonry required was of a quality that would increase the cost over 30 per cent, whereupon they refused to proceed until McC. who was present said to them, "go on and finish the work as you are told by the engineer, and you will be paid for it." They thereupon pulled down what was built and proceeded according to the directions of the engineer. When the work was nearly done McC. tried to withdraw his promise to pay the increased price, but renewed it on the sub-contractors threatening to stop. After completion of the work payment of the extra price was refused, and an action was brought therefor.

Held, affirming the judgment of the Court of Appeal, that the conversation between McC. and S. prior to the commencement of the work, as detailed in the evidence, justified the sub-contractors in believing that the standard of quality was to be that of the Loop line; that the promise to pay the increased price was in