

WALKEM, J. }
MCCREIGHT, J. }

CLARK v. KENDALL.

Assignment—Interpleader—Constructive notice.

On the 29th May, 1894, plaintiff entered into a contract with the city of Vancouver to supply crushed rock to the said city for road making purposes on certain terms therein set out, for a term of five years. Subsequently, and while contract was in existence, with the concurrence of the "city," plaintiff entered into negotiations with one K., with the intention that K. should assume contract in her place. Consequently an agreement was made on December 29th, 1894, between plaintiff and K., by which plaintiff retired from her contract with the city, and a new contract made between the city and K. on practically the same lines as the agreement of May, 1894. By this agreement K. was to pay plaintiff \$11,000, \$5,000 cash and \$6,000 as follows: Twenty cents for every cubic yard of rock delivered and paid for by the said corporation in cash, under the terms of the contract between the party of the 2nd part (i.e. K.) and the said corporation, on the basis of the city engineer's reports of quantities, until the whole of the said sum of \$6,000 is fully paid and satisfied.

There was a further provision as follows: "And it is hereby agreed that should the party of the second part (K.) make default in payment of said balance as set out in the preceding clause, then the party of the second part (K.) hereby authorizes the corporation to pay to the party of the first part (plaintiff) the said sum of 20 cents per cubic yard as aforesaid."

In August, 1895, K. assigned to defendant all moneys owing by the city to him. The agreement between K. and the city was drawn up by K.'s solicitor, who also acted for defendant, and was taken to defendants' house. Defendant knew it was there, and was told by H. what it was, and was given permission to read it. Default was made in the payment of the 20 cents per cubic yard by K. to plaintiff, and plaintiff commenced an action against the city to recover the sum of \$891.40, claimed to be owing by K. to her under an agreement in writing, dated 29th December, 1894, by which certain moneys afterwards to be earned by K. under contract to be entered into with the "city" were assigned to her (plaintiff). The city admitted owing \$538.22 under contract with K., and as money was claimed by both plaintiff and defendant, an interpleader was directed to determine to whom the money belonged. Bole, Co.J., decided in favor of defendant. This was an appeal from his decision.

On the trial it was claimed by counsel for defendant that the city had prior notice of the assignment of K. to defendant, and that defendant had no notice of the assignment by K. to plaintiff of the money owing, or to be owing when earned from the city to him (K.).

Counsel for plaintiff contended that constructive notice had been given by reason of the agreement between plaintiff and K., and that contract between K. and the city.

The appeal was allowed and the judgment appealed from reversed, and judgment entered for plaintiff for the amount in dispute and costs.

Held, (1) per MCCREIGHT, J.: That the provisions of the contract between