MIDDLETON, J. SEPTEMBER 28TH, 1915.

RE THAMES QUARRY CO. LIMITED AND ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE DIOCESE OF TORONTO.

Building Contract—Construction—Work to be Done—Amount Payable to Contractor—Arbitration—Award—Appeal—Removal of Material—Interest—Costs.

Appeal by the company from an award made by His Honour Judge Winchester upon a voluntary submission by the parties of their differences in respect of a building contract and the work done under it by the appellants. The submission provided for an appeal.

R. S. Robertson, for the appellants.

T. L. Monahan, for the corporation, the respondent.

MIDDLETON, J., said that the corporation was erecting a church in Toronto. A contract was made with one McNeill for the excavating and brick and stone work. McNeill failed in the execution of the contract, and the corporation entered into negotiations with the appellants, which resulted in an agreement by which the appellants undertook to supply material and perform labour in connection with the building of the foundations, setting steps, construction of basement floor, and grading—"it being intended that we are to do all the work that is required to be done for the purpose of filling the contract of W. A. McNeill in connection with St. Ann's Church." It was contended that the words quoted were meaningless and to be eliminated from the contract; but, MIDDLETON, J., said, he could not so treat them, nor confine the work undertaken to the specific matters firstly enumerated.

The price to be paid for the completion of McNeill's contract was $1,250, and that was paid. The claim now put forward amounted to $1,028.33; and, after a full and careful trial, the arbitrator concluded that this whole claim was substantially unfounded; he allowed only $28. Speaking generally, the conclusions of the arbitrator were right and ought to be supported.

The appellants contended that, upon making the contract, the corporation became bound to remove all material, so that the work could be readily and conveniently executed—relying upon Drew-Bear v. St. Pancras Guardians (1897), Emden on Building Contracts, 4th ed., appendix, p. 681. That case, however, did not justify the position taken; the appellants knew that they