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APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

FEBRUARY 14TH, 1921.

CANADIAN STEWART CO. LIMITED v. HODGE.

Contract—Sub-contractor for Government Works—Work not Conforming to Specifications and not Satisfactory to Government Engineer—Approval of Inspector—Damages—Counterclaim—Failure to Do Portions of Work—Failure of Principal Contractors to Supply Proper Material—Timbers for Pile-driving—Insufficient Length—Loss to Sub-contractor—Objection not Taken—Findings of Trial Judge—Appeal.

Appeal by the defendant from the judgment of ROSE, J., 18 O.W.N. 417.

The appeal was heard by MEREDITH, C.J.C.P., MIDDLETON, LENNOX, and ORDE, JJ.

McGregor Young, K.C., for the appellant.

D. L. McCarthy, K.C., and A. W. Langmuir, for the plaintiffs, respondents.

MEREDITH, C.J.C.P., in a written judgment, said that it was admitted and was manifest that the work done by the defendant was not done in accordance with the contracts that were binding upon him in this respect, and that it was all removed and done again by others. The defendant took the position that his failure to do the work according to the contract was caused by the plaintiffs' failure to do those things which they contracted with him to do to enable him to perform his contract with them. It was said that the work was largely done with the approval and to some extent under the direction of one of the engineer-inspectors of those for whom the whole of the works, done by others as well as the defendant, were being constructed; but it was admitted and was plain that, having regard to the contracts, this inspector's conduct could not govern or affect the rights of the parties in