

MASTER IN CHAMBERS.

NOVEMBER 19TH, 1912.

CANADIAN WESTINGHOUSE CO., LTD. v. WATER
COMMISSIONERS FOR CITY OF LONDON.

4 O. W. N. 387.

*Pleading—Particulars—Counterclaim—Pleading To—Motion Enlarged
Until After Discovery.*

MASTER-IN-CHAMBERS enlarged a motion for particulars of a reply until after examination for discovery was had where it was apparent that the examination would give the necessary information. Costs in cause.

Motion by defendants for particulars of reply and for leave thereafter to rejoin thereto—and that plaintiffs plead to defendants' counterclaim.

E. C. Cattanach, for the motion.

F. Aylesworth, contra.

CARTWRIGHT, K.C., MASTER:—The facts as set out in the pleadings are as follows. By agreement made in April, 1910, plaintiffs undertook to do certain work for the commissioners to their satisfaction and that of their electrical engineer for the time being, the work to be completed in six months—for which plaintiffs were to be paid \$25,145—that such payment was conditional on the certificate of the engineer as to the amount payable, whose decision as to any question arising on the agreement was to be final—that if the works in question were not completed by 28th October, 1910, the plaintiffs were to deduct from the contract price \$100 a day as liquidated damages until the final completion of the contract—and that by reason thereof instead of plaintiffs being entitled to \$5,500 and interest from 1st March, 1911, as set out in the statement of claim, they have been overpaid and defendants counterclaim for this (if it is really a counterclaim and not a set-off), though not stating any amount. It is also said that no certificate has been given by the engineer. The reply joins "issue to the allegations contained in the statement of defence and puts the defendants to the proof thereof." It further says that the delay in completion of their contract was caused by "failure of defendants to do the preliminary work required" for that purpose—that the refusal of the engineer to give the necessary certifi-