

# The Ontario Weekly Notes

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## APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

JANUARY 5TH, 1915.

### CURLEY v. VILLAGE OF NEW TORONTO.

*Contract—Claim for Payment for Work Done—Extras—Counterclaim—Delay—Findings of Fact of Trial Judge—Appeal—Certificate of Engineer—Judicial Impartiality—Evidence.*

An appeal by the plaintiff from the judgment of CLUTE, J., 8 O.W.N. 274, dismissing the action with costs, and the counterclaim without costs.

The appeal was heard by FALCONBRIDGE, C.J.K.B., MAGEE, J.A., LATCHFORD and KELLY, JJ.

J. J. Gray, for the appellant.

W. A. McMaster, for the defendants, respondents.

LATCHFORD, J., delivering the judgment of the Court, said that it was properly found by the learned trial Judge that the plaintiff had not completed, according to contract, any one of his undertakings with the defendants. What he was entitled to receive had been paid. He had no claim under the contract or for extras.

By a term in each of the three contracts between the parties, payments were to be made to the plaintiff monthly as the work progressed, on the engineer's certificate, at the rate of 80 per cent. of the value of the work done in the preceding month, and the remaining 20 per cent. was to be paid 35 days after the engineer had certified that the work had been completed in accordance with the plans and specifications. A further provision