

APRIL 17TH, 1905.

DIVISIONAL COURT.

GUELPH PAVING CO. v. TOWN OF BROCKVILLE.

*Contract—Paving Work—Measurements—Certificate of Engineer.*

Appeal by plaintiffs from judgment of MACMAHON, J., 4 O. W. R. 483, dismissing an action to recover a balance of \$1,576.28 alleged to be due to plaintiffs on 13th January, 1899, on a contract dated 15th March, 1898, for the construction of granolithic sidewalks in the town of Brockville.

F. E. Hodgins, K.C., for plaintiffs.

J. A. Hutcheson, K.C., for defendants.

The judgment of the Court (MEREDITH, C.J., TEETZEL, J., CLUTE, J.), was delivered by

CLUTE, J.:—In my opinion the judgment of the trial Judge is right and ought to be affirmed.

In the specification, tender, and contract the sidewalk includes the curbing—the curbing is in fact part of the sidewalk.

Clause 2 of the specification provides that “the price submitted in the tenders must include the providing of all materials, tools, and labour, required in the performance of the work, and for the excavation of all material to the depths required from the line of curbing to the full width of the new sidewalk. . . .”

Plaintiffs in the tender “having carefully read and considered the specifications . . . for the construction of granolithic sidewalks and street crossings” (no mention being made of curbing), agree “to furnish all materials and labour required to complete the sidewalks and street crossings, in strict accordance with the . . . specifications, at the following rates for completed work, viz., sidewalk pavement, any width, including artificial stone curbing with iron fencing at street corners, 16 cents per superficial foot.” The specification is made part of the contract.

The contract provides, clause 4: “The corporation agree to pay for such work at the following rates:—Sidewalk pavement, any width, including artificial stone curbing with iron facing at street corners, per superficial foot 16 cents.”