

cut, conveying water from above the coffer dam. It is true that the plaintiff did, after that arrangement, fill up the opening to the east of waste weir, but defendants did the rest, and the plaintiff did continue to work at the concrete work, and under growing disadvantages, owing mainly to the frost which was at hand. Shortly after that, the crisis came. The plaintiff thought he was entitled to money on 15th November. Mr. Fielding would not give him the certificate. He asked plaintiff for a statement of his affairs. The plaintiff refused to give such a statement, but offered to give a certificate such as the contract provides for. That apparently would not satisfy the engineer. In fact, at that time, unquestionably, Mr. Fielding was aroused and anxious and angry at the situation on the edge of winter.

I have no doubt the plaintiff said that if he did not get the money he would not "do another tap on the job," or words to that effect, and, if the engineer had then and there taken the plaintiff at his word, a different situation would have resulted, but he did not take him at his word, and did not then take the work off plaintiff's hands. Plaintiff continued on the work, doing more or less until 22nd November. As to just what was said and what occurred on the 22nd, the parties differ. Mr. Fielding says that he asked plaintiff, in substance, to give up the work, and that plaintiff consented; that he asked plaintiff if he would waive the 5 days' notice required by the contract, and that plaintiff said he would. The members of the council present, who did not hear the whole conversation, did hear the plaintiff say what they understood to mean a willingness to give up, without waiting for the expiration of 5 days after notice. The plaintiff denies that he was willing to give up, and denies that he agreed to waive the 5 days' notice. Whether the engineer is right or plaintiff is right as to the exact words used, it is clear that the plaintiff had not on the 15th, and did not on the 22nd November, or at any time, throw up the contract.

The engineer, acting for the defendants, dismissed the plaintiff and prevented the plaintiff from going on any further with the work.

The conclusion I drew from the evidence is that the engineer did not intend that plaintiff should not get pay for the work done by him, but that he would go on and push the work, charging plaintiff with actual cost, and allowing to him such amount for the actual work done as he would