

might be affected not only by the circumstances arising at the date when the contract-time had ceased to be applicable, but also during its performance, by current changes affecting the contract: *Sims & Co. v. Midland R.W. Co.*, [1913] 1 K.B. 103; *Hicks v. Raymond*, [1893] A.C. 22. The learned Judge referred to the cases cited and to *McDonell v. Canada Southern R.W. Co.* (1873), 33 U.C.R. 313, 320.

Notwithstanding all that was said as to the causes of delay, the learned Judge was of opinion, having regard to the form of the contract, that there was undue delay both in the delivery and setting, and a breach of the contract in that regard.

The evidence as to damages was very indefinite. A number of items of damage were given by the plaintiffs, but only one should be allowed, viz., the actual net cost of screening of operations and protecting buildings, \$905.78. The plaintiffs knew at an early date that the building must be enclosed if the trades under the other sub-contracts were not to be delayed; they intended to enclose the building themselves if it were not done by the defendants; they took the responsibility; and the measure of damages would be, not what they suffered from their enclosing the building imperfectly, but what would be a reasonable charge for doing that which the defendants had failed to do.

The plaintiffs' items of damage were exaggerated and unreasonable, and they should have no costs.

Judgment for the plaintiffs for \$905.78 without costs.

LATCHFORD, J., IN CHAMBERS.

NOVEMBER 17TH, 1916.

**REX v. BERRY.*

Canada Temperance Act—Magistrate's Conviction—Certiorari—Motion to Quash—R.S.C. 1906 ch. 152, sec. 148—Jurisdiction of Magistrate—No Evidence to Warrant Conviction—Power of Court to Review Finding of Magistrate.

Motion by the defendant to quash his conviction, removed into the Court by certiorari, for a breach of Part II. of the *Canada Temperance Act*, R.S.C. 1906 ch. 152. The conviction was made by the Police Magistrate for the Town of Clinton and Village of Hensall. The alleged offence was committed in Hensall.

The sole ground relied upon was, that there was no evidence