

and, in July, he called upon the then mayor of the town, Mr. Munroe, and requested him to withhold payment of a balance due Price from the town, on his contract. The plaintiff and Mr. Munroe do not agree as to the terms of this conversation, but the learned Judge, in his finding, states that if he had to decide between the version of this conversation given by Munroe and that given by the plaintiff he would accept the mayor's version as correct. Mr. Munroe says, "Mr. Fisher came to my house to see me about the matter. He began by saying that Price, who had the contract to supply the town with some curbing, had bought from him some curbing that was left over at the armory; that he had not paid him and that the bill was going through the council, and he wanted me to hold the cheque passed in his favour till Mr. Price would settle with him. I told Mr. Fisher I would do so, or as much as I could, so that he would get his pay for the curbing that Mr. Price had got from him. Q. Do you remember what time of the year that was? A. That was in the early part of July, 1906. Q. What did you do in consequence of his request? A. The cheque and order were dated on the 7th July, 1906. After signing the cheque I pinned a slip on the cheque asking Mr. Bourne, the town treasurer, not to forward the cheque till he got orders. The cheque remained with Mr. Bourne from that time till early in August. After that I had a letter from a lawyer in St. Stephen threatening to proceed against the town if this claim of Mr. Price was not forwarded. I took that letter and shewed it to the chairman of the street committee, Mr. Henderson, and consulted with him, and we decided. After consulting with Mr. Henderson, I took that letter to Mr. Bourne and told him to forward the cheque to the party who had written the letter, which Mr. Bourne, I presume, did."

After this conversation with the mayor, the plaintiff continued to seek payment from Price for the stone taken by the town, but Price always refused to pay for more than forty feet, claiming that amount was all he had bought from the plaintiff.

In November, a meeting took place between Price, the plaintiff and Mr. Henderson, chairman of the street committee, having in charge the work in which the stone in question was used. These three made some measurements of the curbing laid by the town, with the view, apparently, of arriving if possible at some satisfactory basis of settlement. After the measurements, but before any settlement was