

work did not conform to the plans and specifications and did not satisfy the chief engineer. The question in the case was, whether the fault lay with the defendant, or, as he alleged, with the plaintiffs.

The learned Judge found, for reasons fully stated, that the defendant must pay damages for refusal to supply the material and do his work over again, or to execute the work shewn on the alternative plan; the measure of damages being what it cost the plaintiff to do the work and supply the materials which he ought to have done and supplied.

The plaintiffs' claim for the return of the money paid to the defendant and the defendant's counterclaim for the amount of the 10 per cent. drawback and for payment for the work done in June and July, 1915, should be dealt with together. The plaintiffs were entitled to be put in the same position as if the defendant had done all that he ought to have done in respect of the section of the work which he had done but done defectively; that is to say, it must be ascertained, first, what it cost the plaintiffs to construct that section to the satisfaction of the Minister of Public Works, and, secondly, what the plaintiffs would have had to pay to the defendant if he had really done what his contract required him to do; and the defendant must pay to the plaintiffs the amount by which the cost to the plaintiffs exceeded what he would have earned if he had performed his contract. In ascertaining the cost to the plaintiffs, there should be taken into account: the expense of supplying the things which the defendant's sub-contract obligated him to supply, including new piles and other materials which were required to replace those spoiled by the defendant, as well as the payments made by the plaintiffs to the defendant and their payments to their own employees engaged in doing what the defendant ought to have done; but not the cost of building a coffer-dam and unwatering the work.

For the failure of the defendant to do the other sections of his work there seemed to be no valid excuse: the defendant did not complete his sub-contract, and the plaintiffs did not release him from his obligation; and, if it cost the plaintiffs more to do the work than they would have had to pay him if he had done it, they were entitled to the difference by way of damages.

As to the counterclaim in respect of alleged breaches of contract on the part of the plaintiffs, if there was any failure to furnish such material as was required to enable the defendant to comply literally with the specifications, that failure was not shewn to have caused loss to the defendant.

As to the counterclaim for payment for the use of the defendant's plant, it appeared that, at the suggestion of the defendant,