

induced to enter into the contract for the price and on the terms therein mentioned; they further charged that the representations so made were untrue and misleading—that there was much greater depth of rock than was represented, whereby the cost was greatly increased; they further charged that the line of the sewer was so materially altered, in spite of their protests, and the ground through which they were required to construct the sewers was so much more difficult than that through which the sewers were originally laid out, that the contract was in fact abrogated; and they claimed to recover as upon a quantum meruit for the value of the work done, or, in the alternative, for payment for extras in addition to the contract price.

The action was tried without a jury at Hamilton.

R. McKay, K.C., and Gideon Grant, for the plaintiffs.

I. F. Hellmuth, K.C., and F. R. Waddell, K.C., for the defendant corporation.

CLUTE, J., in a written judgment, found that the representations made by one Taylor, an engineer employed by the defendant corporation, as to the depth of rock, were acted on by the plaintiffs in fixing the amount of their tender; but was of opinion that the plaintiffs were not entitled to rely upon these representations as a ground for a claim against the defendant corporation. There were plans and specifications upon which the tender was based, which formed part of the contract. The defendant corporation was under no obligation to give further information. The plaintiffs were bound to satisfy themselves as to the depth of rock. The plaintiffs received such information as the defendant corporation had, which was given in good faith. Fraud or intentional misleading was not suggested. This portion of the plaintiffs' claim should be dismissed.

The claim that the contract was abrogated by a change of the line of sewer was also untenable. If, by reason of such change, the cost had been increased, that might be a ground for allowing extras. The contract was in fact not changed; and this case must be disposed of under the contract, as the work was carried on and completed thereunder. This portion of the plaintiffs' claim should also be dismissed.

The contract price was \$3,399, which had been paid in full; an additional sum of \$435 had been paid for extras. The actual cost of the work—declared by the city engineer to be a first-class job—was \$9,782.93.

In regard to the claim for extras, the first question was, whether the city engineer, under the contract, had dealt with these extras,