

Appeal dismissed without costs.

*A. C. Brydone Jack*, for the suppliant, J. Speirs.

*A. G. Smith*, Deputy Attorney-General, for the Crown.

*A. J. McColl*, Q.C., for the defendant, G. E. Corbould.

WALKEM, J.]

[Feb. 3.

MCADAM *v.* HORSEFLY HYDRAULIC MINING CO.

*Contract—Certificate—Personal inspection not essential.*

McAdam contracted with the defendant to build a certain amount of sleigh road at a stipulated price; the work to be done according to certain specifications and to the entire satisfaction of a certain arbiter, one Soues, agreed upon by the contracting parties, and further that as a condition precedent for the plaintiff to obtain payment for the completion of the work, he must secure the written certificate of the arbiter, Soues, that the work had been completed as per specifications. M. obtained a certificate from Soues to the effect "that the road has been passed—completed according to the specifications, by road superintendent Barton," and Soues at the same time made a verbal statement to M. that the work was completed to his entire satisfaction. Soues issued the certificate not from a personal inspection of the road, but from the inspection of and favorable report on it of his subordinate, whose especial duty it was to look after and report on the condition of Government roads, etc.

Defendant refused to pay the balance due. M. sued for full amount of the contract price. On the trial the defendant claimed that the certificate was insufficient, on the ground that Soues issued it on the knowledge of another, and did not state that the road was to his entire satisfaction.

*Held*, that Soues admitting to M. verbally that he was satisfied with the work was, accompanied with the certificate, sufficient, and that personal supervision was not necessary to the issuing of the certificate: *Clemence v. Clark*, Roscoe's Bldg. Cases, 3rd ed. p. 141, and that therefore the plaintiff was entitled to succeed.

*A. H. MacNeill*, for the plaintiff.

*C. Wilson*, for the defendant.

DAVIE, C.J.]

[Feb. 6.

GERARD *v.* CYRS; BURKE, Garnishee; ROBERTS, Claimant.

*Promissory note—Cancellation void after garnishee process served.*

Cyrs sold some cattle to Burke, taking the latter's promissory note in payment. Gerard, as creditor of Cyrs, attached the debt of Burke to Cyrs. Roberts, claiming to have been the real owner of the cattle, and saying the note should have been made payable to him, not to Cyrs, returned the first note to Burke after the latter was garnisheed, and demanded a new note payable to himself, whereupon Burke destroyed his note to Cyrs, and made one to Roberts instead.

*Held*, that the note of Burke to Cyrs was actually payable to Cyrs; that