

forwarded as a sample was not satisfactory, where the contract of sale contained a stipulation that it was "subject to the approval of fire boxes, when ready for shipment"; the buyer must still inspect and pass upon a shipment of five boxes forwarded for the approval of the buyer in accordance with the terms of the contract and if the buyer refuses even to inspect these shipments, on the ground that the rejection of the one box operated as a termination of the contract, the seller may re-sell the goods and recover damages.

*Borrowman v. Free*, 4 Q.B.D. 500, applied.

*Shirley Denison*, for defendants. *M. Wright* and *W. D. M. Shorey*, for plaintiffs.

Middleton, J.]

[March 20.

NIAGARA AND ONTARIO CONSTRUCTION CO. v. WYSE AND UNITED STATES FIDELITY AND GUARANTY CO.

(10 D.L.R. 116.)

*Bond for indemnity and security—Contractor's bond—Principal and surety—Waiver of claims—Release of surety—Rights and remedies of a surety—Credit for allowances waived—Contractor's bond—Advances to assist completion of contract.*

Where a guaranty company entered into a bond which was conditioned that a sub-contractor would "well and faithfully in all respects perform, execute and carry out the said contract," and recited that annexed to the bond was a copy of the contract in question, which, however, did not contain some slight alterations made on the final revision of the contract as re-executed by the parties after the date of the bond, the guaranty company are not relieved from liability if the words inserted do not alter the meaning of the contract in any way, since the guaranty company was not prejudiced by an immaterial alteration.

*Tolhurst v. Portland Cement Manufacturers*, [1903] A.C. 422; *Harrison v. Seymour*, L.R. 1 C.P. 518; *Croydon, etc., Co. v. Dickinson*, 2 C.P.D. 46, referred to.

A waiver of a claim for damages which may arise out of delays or interruptions in the performance of a contract does not constitute any material change in the contractual obliga-