

investigated and considered by the Chancellor, with the assistance of the Master's reasons for his findings, and again in the Divisional Court, with the assistance of all that had previously been said upon the subject, that further discussion would be merely putting in my own words those things which have been plainly and well said. I quite agree in that which was said in each Court as to the Master's finding upon this important initial question.

But I cannot think that the case is a proper one for sending the parties back to the morass of another reference, the costs of which might amount to more than the real amount in difference. I agree with the Divisional Court in the view there expressed that the evidence already taken suffices to do justice between the parties as to the amount due to the plaintiff based upon the price named in the agreement and making all proper allowances for variations in all respects.

On the 15th December, 1910, the plaintiff wrote to the defendant that he had decided to accept the amount the defendant had offered him, \$3,315 in settlement, provided that he should have also some posts and shingles described in the letter; that sum with the amount already paid on account of the contract amounting to \$8,315.

A very careful examination of the whole evidence satisfies me that in the making and accepting of the offer of this amount each of the parties knew pretty accurately the true amount which was really due from the one to the other; that in truth the sum so due is the amount mentioned in that letter; and that any number of references, and the waste of any amount of additional costs, could not rightly lead to any better conclusion.

For the order made in the Divisional Court I would substitute one directing judgment for the plaintiff for \$3,315 with interest from the date mentioned; with costs to be paid as already adjudged; but without costs of this appeal: when parties to an action have left the subject-matter of their litigation so tangled or uncertain that the interposition of the Court is needed to make plain that which they would have themselves made plain, neither party whether winner or loser, or partly each, can well complain if part of the costs falls on him.

HON. MR. JUSTICE GARROW and HON. MR. JUSTICE LENNOX agreed.