

required, at least so long as the building continued to exist in the condition in which it had been so constructed. Appeal dismissed with costs.

*Pelletier*, K.C., for appellant. *Stuart*, K.C., for respondents.

EXCHEQUER COURT OF CANADA.

Burbidge, J.]

[Dec. 2, 1901.

GILBERT BLASTING AND DREDGING CO. v. THE KING.

*Contract—Public work—Breach—Contractor's duty to press claims—Extra work—Loss of profits—Damages.*

By a clause in the suppliants' contract with the Crown for the construction of a public work, it was, in substance, stipulated that if the contractors had any claims which they considered were not included in the progress certificates it would be necessary for them to make and repeat such claims in writing to the engineer within fourteen days after the date of the certificate in which such claims were alleged to have been omitted; and by another clause it was stipulated that the contractors in presenting claims of this kind should accompany them with satisfactory evidence of their accuracy, and the reason why in their opinion they should be allowed; and unless such claims were so made during the progress of the work and within the fourteen days mentioned, and repeated in writing every month until finally adjusted or rejected, it should be clearly understood that the contractors would be shut out and have no claim against the Crown in respect thereof. The suppliants did not comply with these provisions.

*Held*, that a petition of right for moneys claimed to be so due to contractors could not be sustained.

By one of the clauses of the contract it was provided that the engineer might, in his discretion, require the contractor to do certain work outside of his contract.

*Held*, that there was no implied contract on the part of the Crown that work outside of the contract which the engineer might, under the authority so vested in him have required the contractor to do, should be given to the contractor; and where this is not done by the engineer, and such outside work is given to others, the contractor is not entitled to the profit that he would have made on the performance of such work.

Where by a change in the plan of the works, certain works were abandoned and others substituted therefor, and the contractor was paid the loss of profits in respect of such abandoned works, he is not entitled to profits upon the substituted works.

*Aylesworth*, K.C., and *Belcourt*, K.C., for suppliants. *Newcombe*, K.C., for respondent.