

took care to ascertain whether they were satisfactory on engineering grounds to the city corporation. In effect, there was no difference on engineering grounds between the city corporation and the appellants when the Board finally approved the plans for carrying a spur-line on the level across the sidewalk on the west side of Yonge street; and, in these circumstances, no further consent was required. In the event of any difference arising between the parties as to anything to be done under the terms of the agreement, the agreement contains an ample arbitration clause.

The appeal should be allowed with costs here and in the Court below.

APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

NOVEMBER 20TH, 1916.

BALDRY YERBURGH & HUTCHINSON LIMITED
v. WILLIAMS.

*Contract—Indemnity and Guaranty—Action to Enforce—Defence
—Fraud and Misrepresentation—Failure to Prove—Finding
of Trial Judge—Appeal.*

Appeal by the defendants from the judgment of MIDDLETON, J., 10 O.W.N. 309.

The appeal was heard by MEREDITH, C.J.O., MAGEE and HODGINS, JJ.A., and SUTHERLAND, J.

C. V. Langs, for the appellants.

W. N. Tilley, K.C., for the plaintiffs, respondents.

THE COURT dismissed the appeal with costs.