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HIGH COURT OF JUSTICE.

DIVISIONAL COURT.

NOVEMBER 25TH, 1912.

RICE v. SOCKETT.

Evidence—Expert Evidence—Building of Silo—Trial by Judge—Refusal of, to Observe 9 Edw. VII. ch. 43, sec. 10—Limitation of Number under—Expert, Definition of—Mistrial.

Appeal by the plaintiff from the County Court of the County of Wellington. Plaintiff sued for \$180 as balance of the contract price for the building of a silo on defendant's farm. Defendant denied the allegations in the statement of claim and set up by way of counterclaim that the plaintiff did not build or complete the silo in accordance with the terms of plaintiff's contract with defendant, and that in consequence thereof he suffered loss and damage.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and SUTHERLAND, JJ.

R. L. McKinnon, for the plaintiff.

C. L. Dunbar, for the defendant.

FALCONBRIDGE, C.J.K.B.:—The case was tried before the learned County Judge without a jury. He gave judgment dismissing the plaintiff's action with costs and adjudging that defendant should recover against plaintiff on his counterclaim \$130 and costs.

From this judgment the plaintiff appeals on several grounds, only one of which, in my opinion, it is necessary to consider, viz., the refusal of the learned Judge to observe the provisions of 9 Edw. VII. ch. 43, sec. 10, which is as follows:—