stories, wood, lined in brick, for M. Thibodeau-masoniy, C. St. Germain; car-pentry, A. Chalitoux; cost, \$7,000. One Reparations and modifications of a house (front elevation) on Peel street for A. G. Thompson-architect, R. Findlay; mason-ry, George Nicholson. One building and ice storage building, 47 x 31 feet, on Roy street, for A. E. Sheppell architect, Walter Livermore; masonry, A. E. Wand. One house, two tenements, 24 x 26 feet, two stores, brick, on Charton 36 feet, two stones, brick, on Charron street, for J. R. Lewis-architect, Geo. Stup; masonry, John Quinian, carpen try, J. McGee.

EXCUSES FOR NON-PERFORMANCE OF A CONTRACT.

The performance of huilding contracts is liable to be prevented from more vancus causes than other contracts. As a general rule, difficulty, and even impossibility in rule, difficulty, and even impossibility in fact, is no excuse for non-performance by a contractor. An agreement may be im-possible of performance at the time when it is made, and this in various ways. It may be impossible in itself that is, the agreement uself may involve a contradiction : as if it contains promises incon-sistent with one another or with the date of the agreement. Or the thing contracted for may be contrary to the course of nature : as if a man should undertake to make a river run up a hill, or to con-struct a perpetual motion. It may be imstruct a perpetual motion. It may be im-possible by law, as being inconsistent with some legal principle or institution -as in the cases of attempts to enable a stranger to a contract to sue upon it by agreement of the parties, or as if a man should give a bond to secure a simple contract with a collateral agreement that the simple contract debt should not be merged. It may also be impossible, in fact, by reason of the existence of a particular state of things which makes the performance of the particular contract impossible : as where a lessee covenants to dig not less than 1,000 tons of a cer-tain kind of clay on the land demised in every year of the term, but there is no such clay on the land.

Where from the nature of the contract it appears that the parties must from the beginning have known that it could not be fulfilled unless when the time for the fulfilment of the contract arrived some particular specified thing continued to exist, so that when entering into the con-tract they must have contemplated such

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continued existence as the foundation of what was to be done, then, in the absence of any express or implied warranty that the thing shall exist, the contract is not to be construed as a positive contract, but as subject to an implied condition that the parties shall be excused in case, that the parties shall be excused in case, before breach, performance becomes im-possible from the perishing of the thing without default of the contractor. Under this come all entire contracts to expend labor and materials upon the existing property of others. In such cases, in the absence of anything to the contrary, the contract is entered into subject to an im-blied condition that the thing exists or plied condition that the thing exists or will continue to exist without any warranty on the part of the employer that it shall exist, and upon its ceasing to exist without the fault of either party the contract is at an end, and further performance by both parties is excused.

Defects in the soil do not excuse contractors from the pertor mance of a con-tract to erect a building, and for failure to perform they are hable in damages. It is no defence to an action for such damages no defence to an action for such damages that the building, so far as it was erected, was constructed in accordance with the plans and specifications. This rule seems to apply equally to latent and patent defects. If a person contracts with the owner of a plot of land to build and complete a building and by reason of a latent defect in the soil it falls, the contractor is the loser.

In the absence of special provisions in the contract, strikes offer no excuse for non-performance. Where a strike excepted by the terms of the contract is so long that it puts an end, in a commercial sense, to the commercial speculation, or would frustrate the object of the under-taking, the strike would put an end to the contract, but not if it operates as a mere

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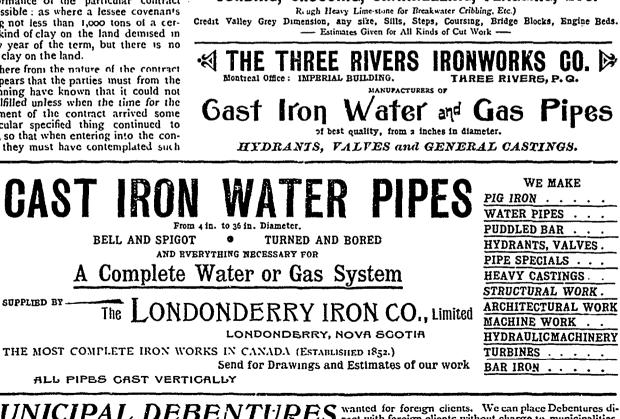
delay. The exception will be good even though the strike was caused by the de-fendant lowering his workmens' wages. In no case, however, is it a defence that the delay was caused by a strike which took place after the time fixed for completion. The contractor cannot plead bad weather or winter as an excuse for defects in the work he has contracted to do unless, by postponing the work till an unsuitable season, the employer wholly de-parts from the contract originally conemplated.

As a general rule, the contract, if lawful, can only be rescinded by the consent of both parties. It is also a general rule that where one party to a contract re-pudiates *it*, the other party can sue at once. The employer may repudiate by giving notice to the builder not to do any more work. While a contract is execut-ing, a party has the power to stop the per-formance on the other rule by an explicit formance on the other side by an explicit direction to that effect, but thereby sub-jects himself to liability for the payment of such damages as will compensate the other party for being stopped in the per-formance of the contract. Rufusal by the employer to pay an account where nothing is due cannot be taken as a recession or abandonment of the contract by the em-ployer. Non-payment of instalments, even when they are due, does not, per se (in the absence of a special clause in the contract), excuse the contractor for refus-ing or delaying execution of his part of ing or delaying execution of his part of the contract, but the circumstances may evince an intention to abandon or an incapacity to perform.

(To be Continued.)

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