

stories, wood, lined in brick, for M. Thibodeau—masonry, C. St. Germain; carpentry, A. Chaliloux; cost, \$7,000. One building, 48x33 feet, ... stories, for Dame Vve. Louis Fortier—masonry, Gagnon & Charette; carpentry, K. Laberge. Repairs and modifications of a house (front elevation) on Peel street for A. G. Thompson—architect, R. Findlay; masonry, George Nicholson. One building and ice storage building, 47x31 feet, on Roy street, for A. E. Sheppell architect, Walter Livermore; masonry, A. E. Wand. One house, two tenements, 24x36 feet, two stories, brick, on Charlton street, for J. R. Lewis—architect, Geo. Stup; masonry, John Quinan, carpentry, J. McGee.

### EXCUSES FOR NON-PERFORMANCE OF A CONTRACT.

The performance of building contracts is liable to be prevented from more than usual causes than other contracts. As a general rule, difficulty, and even impossibility in fact, is no excuse for non-performance by a contractor. An agreement may be impossible of performance at the time when it is made, and this in various ways. It may be impossible in itself that is, the agreement itself may involve a contradiction: as if it contains promises inconsistent 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 construct a perpetual motion. It may be impossible 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 certain 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 contract they must have contemplated such

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, before breach, performance becomes impossible 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 implied 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 performance of a contract to erect a building, and for failure to perform they are liable in damages. It is 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 undertaking, the strike would put an end to the contract, but not if it operates as a mere

delay. The exception will be good even though the strike was caused by the defendant lowering his workmen's 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 departs from the contract originally contemplated.

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 repudiates 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 executing, a party has the power to stop the performance on the other side by an explicit direction to that effect, but thereby subjects himself to liability for the payment of such damages as will compensate the other party for being stopped in the performance of the contract. Refusal by the employer to pay an account where nothing is due cannot be taken as a recession or abandonment of the contract by the employer. 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 refusing 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.)

**SCORIA PAVING BLOCKS** are the Best All-Round Paving Material yet discovered.  
W. H. KNOWLTON & CO.,  
Dealers in Contractors Supplies, 36 King St. E., Toronto

### CHARLES HUGHES - Milton West, Ont.

All Kinds of Municipal Work

#### CURBING, CROSSING, CHANNELLING, FLAGGING, ETC.

Rough Heavy Lime-stone for Breakwater Cribbing, Etc.)

Credit Valley Grey Dimension, any size, Sills, Steps, Coursing, Bridge Blocks, Engine Beds.

— Estimates Given for All Kinds of Cut Work —

### THE THREE RIVERS IRONWORKS CO.

Montreal Office: IMPERIAL BUILDING.

THREE RIVERS, P. Q.

MANUFACTURERS OF

#### Cast Iron Water and Gas Pipes

of best quality, from 2 inches in diameter.

HYDRANTS, VALVES and GENERAL CASTINGS.

## CAST IRON WATER PIPES

From 4 in. to 36 in. Diameter.

BELL AND SPIGOT • TURNED AND BORED  
AND EVERYTHING NECESSARY FOR

### A Complete Water or Gas System

SUPPLIED BY — The LONDONDERRY IRON CO., Limited

LONDONDERRY, NOVA SCOTIA

THE MOST COMPLETE IRON WORKS IN CANADA (ESTABLISHED 1852.)

Send for Drawings and Estimates of our work

ALL PIPES CAST VERTICALLY

WE MAKE

PIG IRON . . . . .  
WATER PIPES . . . . .  
PUDDLED BAR . . . . .  
HYDRANTS, VALVES . . . . .  
PIPE SPECIALS . . . . .  
HEAVY CASTINGS . . . . .  
STRUCTURAL WORK . . . . .  
ARCHITECTURAL WORK . . . . .  
MACHINE WORK . . . . .  
HYDRAULIC MACHINERY . . . . .  
TURBINES . . . . .  
BAR IRON . . . . .

## MUNICIPAL DEBENTURES

wanted for foreign clients. We can place Debentures direct with foreign clients without charge to municipalities.

: : : Commission allowed to persons introducing new business : : : :

**ÆMILIUS JARVIS & CO.** (Member Toronto Stock Exchange) — Stock and Bond Brokers. Investment Agents. 23 King St. West, TORONTO

ELECTRIC RAILWAY BONDS PURCHASED.

STOCK EXCHANGE ORDERS PROMPTLY EXECUTED

--- BRAND "SIEMENS" ---