

BRITTON, J.:—A contract was entered into between the parties on 27th March, 1907, for completing a concrete work of a dam and power-house at Streetsville for the defendants.

The work was to be done agreeably to plans and specifications prepared by John S. Fielding, and to the satisfaction and under the direction and personal supervision of Mr. Fielding or a representative or clerk of works appointed for the purpose—to be completed before 15th October, 1907.

The matters which have taken up a lot of time, and created some confusion during the trial, are all carefully provided for by this contract.

The defendants had the right to change the site of the coffer-dam. The defendants were to pay for the gravel, or to supply a gravel pit. That means practically that they selected and furnished the gravel, and, subject to certain qualifications as to screening, &c., they were responsible for and took chances as to its quality. The defendants and their engineer had the right to make changes at any time during the progress of the work, and questions as to labour or material or as to anything to be paid for, and not provided for by the contract, were to be determined by the engineer. Any dispute in regard to the construction of plans or specifications, or any dispute during the construction of the contract, was to be referred to the engineer. Apparently no such disputes as are within the contemplation of this contract did arise during its continuance. This was a contract to construct the whole work for a price to be ascertained by the schedule of prices named for particular things to be done. The plaintiff was to be paid upon the basis of work done, upon an estimate and certificate in writing to be given by the engineer. Each payment was to be 80/100 of the work done, but not to include work of one week next before the date of the certificate. The payments were called "progress payments."

The contract is a very full and complete one, apparently providing for every possible contingency, and, as usual in such contracts, aims to protect the proprietors whatever may occur.

The plaintiff entered upon the work, and all agree that at first and for a considerable time there was no serious complaint, but it is a fact that the plaintiff did not proceed even in the early part of his work in a pushing or vigorous way. He acted as if he had plenty of time, and so did not make the most of his opportunity. He was warned that he was