

leged in paragraphs 10 and 12 especially. A further affidavit should be filed in accordance with the above. Costs of the motion to be costs to the plaintiff in the cause. W. E. Raney, K.C., for the plaintiff. Casey Wood, for the defendants.

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FINLAYSON v. O'BRIEN—BRITTON, J.—JUNE 10.

*Contract—Sub-contract for Railway Construction Work—Payment—Terms of Contract—Inclusion of Terms of Principal Contract—Partnership—Authority of Partner—Acquiescence—Withholding of Percentage of Price—Premature Action—Costs.]*  
 Action for money alleged to be due to the plaintiff upon a contract between the plaintiff and the defendants for work on the construction of the National Transcontinental Railway. In the year 1908, the defendants had a contract with the Transcontinental Railway Commission for the construction of a large section of the railway east of Superior Junction; and the plaintiff entered into a sub-contract with the defendants for the doing of a part of the work. The amount sued for was \$18,216.44 with interest from the 1st August, 1911. There was no contract in writing between the plaintiff and defendants. A written contract, dated the 1st October, 1908, purporting to be between the defendants and Finlayson and Barry, was signed by Barry as the plaintiff's partner; and the defendants said that this contract was, in its terms, the contract verbally made with them by the plaintiff; and was finally accepted by the plaintiff; and, even if not, was binding upon him, having been signed by his partner. BRITTON, J., upon conflicting evidence, concludes that the real contract between the plaintiff and defendants was, except as to prices and some minor matters not in dispute, the same as the contract between the defendants and the Transcontinental Railway Commission; that the contract signed by Barry was binding on the plaintiff; apart from acquiescence, that contract was practically, and in all respects material in this action, the same as the verbal contract entered into; by the terms of that contract, the plaintiff was bound by the terms of the contract between the defendants and the Commission; and, by the latter, the time for payment of the amount claimed in this action, the ten per cent. drawback of the sum payable to the plaintiff for his work, had not arrived when this action was begun. Action dismissed as premature, but without prejudice to any future