

as follows: "We hereby certify that the above statement, amounting to \$6,607.66, is correct and has not been previously certified."

It was not stated in the certificate that the work had been duly performed, fully executed or completed; or that it had been done to the satisfaction of the engineer.

Held, 1. The engineer had no power to give such final certificate at the time he did, as the contractor had not completely fulfilled the contract requirements, as the certificate itself shewed. *Davidson v. Francis*, 14 M.R. 141, and *Canty v. Clark*, 44 U.C.R. 222, followed.

2. The plaintiffs, not having fully completed the work, could recover nothing in this action. *Brydon v. Lutes*, 9 M.R., at pp. 471-472, followed.

3. In this action, which was to recover the balance unpaid of the whole contract price, the plaintiffs could not recover in respect of the balance remaining unpaid of the progress estimates issued from time to time by the engineers. *Tharsis v. McElroy*, 3 A.C., per Lord Cairns, at 1045, followed.

Symington, for plaintiff. *L. B. Hudson and Garland*, for Parks Board. *Hoskin*, K.C., for third parties.

KING'S BENCH.

Robson, J.]

COOPER v. ANDERSON ET AL.

[Feb. 23.]

Real Property Act, R.S.M. 1902, c. 148, ss. 71 and 91—Purchaser for value without notice—Trust—Caveat.

Under ss. 71 and 91 of the Real Property Act, R.S.M. 1902, c. 148, a person who purchases land under an agreement of sale from the holder of a certificate of title under the Act without any notice or knowledge of any trust to which the land was subject in the hands of such holder, or of any other defect in the title, takes the land free from any such trust or defect and from all liability to any action at the suit of any person claiming an interest in the land as against the vendor, and it makes no difference that he receives notice of the claim of such person before he has paid all his purchase money or received his transfer.

If, therefore, in an action against the vendor charging fraud in his dealings with the land and a secret trust in the plaintiff's favour, such purchaser is made a party defendant, in respect of his agreement registered by way of caveat against the lands, he will be entitled to an order dismissing the action as against him with costs.