

THE  
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HON. MR. JUSTICE MIDDLETON.      SEPTEMBER 30TH, 1913.

DAVID DICK & SONS, LTD. v. STANDARD UNDERGROUND CABLE CO. AND HAMILTON BRIDGE WORKS, LTD.

5 O. W. N. 82.

*Contract—Default in Delivery of Goods Purchased—Cause of—Evidence—Dismissal of Action—Contingent Assessment of Damages.*

MIDDLETON, J., *held*, in an action for damages for non-delivery of goods as ordered that the default was due solely to the actions of the plaintiffs and dismissed the action with costs, but fixed the damages in the event of a successful appeal at \$1,000.

Action by contractors of Welland against defendants, a Hamilton Company, for \$100,000 damages, alleged to have been caused by reason of non-delivery of steel to complete their contract and for loss on other contracts, etc. Defendants counterclaimed for \$33,197.75, moneys paid on plaintiff's account in connection with completion of said contract.

J. L. Counsell, for the plaintiffs.

D. L. McCarthy, K.C., and G. H. Levy, for the defendants.

I. F. Hellmuth, K.C., and E. H. Ambrose, for third party.

HON. MR. JUSTICE MIDDLETON:—At the hearing all the questions in issue between the plaintiffs and defendants were disposed of, except that relating to the liability of the defendants owing to the delay in the supply of steel necessary for the construction work.

After considering the matter very carefully I can see no reason for discrediting the evidence given on behalf of the third party shewing that the delay in the furnishing of