

CLUTE, J.

NOVEMBER 14TH, 1916.

NORCROSS BROTHERS CO. v. HENRY HOPE AND SONS
OF CANADA LIMITED.

Building Contract—Sub-contract—Delay of Sub-contractors—Waiver—Reasonable Time for Delivery of Material and Completion of Work—Reasons for Delay—Breach of Contract—Damages—Costs.

Action for damages for default in fulfilling a sub-contract within the time limited.

The plaintiffs were building contractors in a large way, having their head office at Worcester, Massachusetts, and engaged in the construction of buildings in the United States and Canada. The defendants were a company incorporated under the laws of Ontario and carrying on business at Toronto.

On the 29th April, 1913, the plaintiffs entered into a contract with the Board of Education for the City of Toronto to erect a Central Technical School building; and on the 19th June, 1913, the plaintiffs made a sub-contract with the defendants whereby the defendants agreed to furnish the steel sash required in the exterior and court walls of the building, as described in the contract and specifications, for the sum of \$19,500, to be delivered "at such time as will not delay the construction of the building—all the casement sashes required for the exterior to be your 4 C section as shewn on pages 28 and 29, with a T-iron frame going entirely round the opening as illustrated in your catalogue, page 51." The defendants also agreed to set complete in place all their work for the additional sum of \$2,000. By article 6 of the contract, delivery was to be commenced on the 1st January and completed on the 1st February, 1914.

The plaintiffs alleged that the defendants continuously failed to deliver the sash; that the delivery was not completed so as to enable the building to be closed before the frost came in the latter portion of 1914; that the defendants were well aware and were notified by the plaintiffs that the failure to deliver the sash was causing delay and loss and would cause delay and loss if not delivered in time to enable the building to be closed in before the frost came, notwithstanding which the defendants failed to make such delivery.

The defence was, that the delays, if any, in carrying out the contract were created by the plaintiffs and their architects, who required certain changes to be made in the form, description, and