

*Held*, on appeal, that the order of the referee should be varied by directing that the plaintiff do furnish the best particulars he can give of the manner in which the defendant caused and procured the charges to be laid, with liberty to supplement his particulars after obtaining production of documents and examining the company's officers, such additional particulars to be given not later than ten days before the trial of the action. *Marshall v. Interoccenic*, 1 Times Rep. 394; *Williams v. Ramsdale*, 36 W.R. 125; Annual Practice, 1908, p. 251, followed.

Costs of the appeal and of the order appealed from to be costs in the cause to the defendant.

*Hagel*, K.C., for plaintiff. *Clark*, K.C., for defendants.

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Macdonald, J.]      KELLY v. WINNIPEG.      [Nov. 6, 1908.

*Contract—Agreement by contractor with proprietor to pay workmen certain fixed wages—Right of proprietor to compel contractor to pay such wages.*

As part of the contract between the plaintiffs and the city of Winnipeg for the doing of certain work on a bridge, the plaintiffs agreed that a minimum rate of wages for employees engaged on the works, known as "the fair wage schedule," should be paid. Payments by the city for the work were to be made on monthly progress estimates on the certificate of the city engineer.

*Held*, that the defendants could not withhold payment of any portion of the amount of a monthly progress estimate certified by the engineer on the ground that the contractor had paid his workmen less than the rates of wages that had been provided for.

The workmen had no claim upon the city; they were not parties to the issue, nor were they before the court, and it was not established that the city had sustained any damage in consequence of the plaintiffs' breach of their agreement. If the city engineer had withheld his certificate, possibly the plaintiffs might have been compelled to pay according to the "fair wage schedule" in order to obtain it; but, as matters stood, the workmen were without remedy for the difference in wages.

*Towers*, for plaintiffs. *Hunt*, for defendants. *Locke*, for workmen.