

and of the workmen, speaks of the conditions which they observed, and amongst which they were endeavouring to work, and may well be relied upon as the experience of those actually engaged in efforts to carry out the contract. And no reason has been presented why their testimony, which was accepted and acted upon by the trial Judge, should now be set aside in favour of the testimony adduced by defendants. Without going through the mass of evidence in detail, and pointing out the relative force and weight of each piece of testimony, it is sufficient to say that the findings of the trial Judge are amply supported.

Upon the findings of fact, there was no justification for defendants' action. By their refusal to remove the soot and to take steps to put the plaster into proper condition, so as to enable plaintiffs to proceed with their contract, they prevented plaintiffs in the execution of their work. And having then, on the pretence that plaintiffs were improperly delaying the work, assumed to cancel the contract and discharge plaintiffs from the work, they are liable to pay the damages resulting from their action. As said by Lord Davey in delivering the judgment of the Judicial Committee of the Privy Council in *Ladder v. Slowey*, [1904] A. C. 442, at p. 452, "A party to a contract for execution of works cannot justify the exercise of a power of re-entry and seizure of the works in progress when the alleged default or delay of the contractors has been brought about by the acts or defaults of the party himself or his agent."

This being established against defendants, the judgment entered is right as regards both liability and amount. Plaintiffs lost the amount expended upon the work and the anticipated profits, and these defendants should make good.

As to the argument that the questions were matters for determination by the architect, the trial Judge properly disposed of it. It is by no means free from doubt whether questions of the kind in controversy here fall within the terms of the agreement. But, if they do, they could not be decided until they were formally and properly submitted for decision. But this was not done, and neither formally nor informally did the architect decide the matter and announce his decision to the parties. Certainly he never announced it to plaintiffs, and plaintiffs were never given an opportunity of having these questions decided even by the architect before the cancellation of the contract.

The appeal should be dismissed.