

W. Laidlaw, K.C., and J. Bicknell, K.C., for the applicants.

E. D. Armour, K.C., and C. A. Masten, for the Rathbun Company.

MEREDITH, C.J., (after stating the facts):—Upon the argument I expressed the opinion that as to certain of the questions no directions should be given, and as to others I reserved my decision.

The questions reserved for decision were: (1) Whether upon the true construction of the contract the applicants were, for the 66 cords of wood delivered daily (Sundays excepted), bound to deliver 85,000 bushels of charcoal per month, or whether delivery of what was or might have been, with proper care and skill and without waste, produced from the wood, though less than 85,000 bushels per month, was a compliance with the terms of the contract. (2) Whether there had been a breach of the agreement on the part of the applicants which entitled the Rathbun Company to take possession of the works. (3) Whether the claim of the Rathbun Company for the use of more than 66 cords per day was properly the subject of a reference to arbitration under paragraph 22 of the agreement.

It was objected by counsel for the Rathbun Company: (1) That the dispute as to the construction of the contract was a question specifically referred, and that sec. 46 was inapplicable, because the question was not one "arising in the course of the reference." (2) That the applicants were precluded by the course taken by them on the reference from invoking the aid of the Court under sec. 41. (3) That at all events, as a matter of discretion, the direction asked for ought not to be made.

I have come to the conclusion that the first objection is not well founded. Owing to the way in which the reference to the arbitrators has been effected, it is necessary to spell out from the various documents by which it was completed the subject-matter of the reference, and, as I understand the effect of these documents, one of the claims of the Rathbun Company, and the principal one, is that the applicants have not delivered the quantity of charcoal which, under the terms of their agreement, it was their duty to deliver, and to recover damages for that breach. The Rathbun Company do not rest this claim solely upon the construction of the contract for which they contend, but, while taking the position that that construction is the right one, they also assert that, even if the contention of the applicants as to the meaning of the