

lish is that the premiums were by consent of the insurance companies taken into account and dealt with in such a way as to amount to payment, and that therefore the cancellation which the insurance companies made, or attempted, was wrongful and can impose no liability upon him.

The appeal will be dismissed, with costs to the defendant in any event.

1ST APPELLATE DIVISION.

JULY 2ND, 1913.

RICE v. SOCKETT.

4 O. W. N. 1570.

Contract—Work and Labour—Building of Silo—Findings of Trial Judge—Counterclaim—Damages for Loss of Crop—Evidence—Quantum of Damage.

SUP. CT. ONT. (1st App. Div.) dismissed appeal from judgment of County Court of Wellington, dismissing plaintiff's action for work and labour supplied under a contract for the construction of a silo, but reduced the damages awarded defendant upon his counterclaim from \$96 to \$40.

Appeal by plaintiff from judgment of the County Court of the county of Wellington, dismissing an action for \$180 for work and material supplied for the construction of a silo, and allowing the defendant \$96 on his counterclaim for damages for defective work. See report of appeal from judgment at former trial, 23 O. W. R. 602, 27 O. L. R. 410.

The second appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE, and HON. MR. JUSTICE HODGINS.

R. L. McKinnon, for plaintiff.

J. J. Drew, K.C., for defendant.

HON. MR. JUSTICE MAGEE:—The plaintiff was to furnish the cement and doors and do the work. The defendant was to provide the gravel and stone and water. The plaintiff admits that he was to do a first-class job, so far as his own material and the workmanship were concerned.

The defendant alleges that the work is very rough and defective, the concrete improperly mixed so that it does not form a hard, solid wall, and has, in many places, so little binding that it readily disintegrates, and it would be unsafe