
REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Exchequer.]

GOODWIN v. THE QUEEN.

[March 8.

*Contract—Construction of—Public works—Arbitration—Progress estimate—
Engineer's certificate—Approval by head of department—Final estimate
Condition precedent—Obiter dicta.*

Clauses 8 and 25 of the appellant's contract for the construction of certain public works were as follows :

" 8. That the engineer shall be the sole judge of work and material in respect of both quantity and quality, and his decision on all questions in dispute with regard to work or material, or as to the meaning or intention of this contract, and the plans, specifications and drawings shall be final, and no works or extra or additional works or changes shall be deemed to have been executed, nor shall the contractor be entitled to payment for the same, unless the same shall have been executed, to the satisfaction of the engineer, as evidenced by his certificate in writing, which certificate shall be a condition precedent to the right of the contractor to be paid therefor ;" but before the contract was signed by the parties the words "as to the meaning or intention of this contract, and the plans, specifications and drawings," were struck out.

" 25. Cash payments to about ninety per cent. of the value of the work done, approximately made up from returns of progress measurements, and computed at the prices agreed upon or determined under the provisions of the contract, will be made to the contractor monthly on the written certificate of the engineer that the work for, or on account of, which the certificate is granted has been duly executed to his satisfaction, and stating the value of such work computed as above mentioned, and upon approval of such certificate by the minister for the time being, and the said certificate and such approval thereof shall be a condition precedent to the right of the contractor to be paid the said ninety per cent. or any part thereof."

A difference of opinion arose between the contractor and the engineers as to the quantity of earth in certain embankments which should be paid for at an increased rate as "water tight" embankment under the provisions of the contract and specifications relating to the works, and the claim of the contractor was rejected by the engineer, who afterwards, however, after the matter had been referred to the Minister of Justice by the Minister of Railways and Canals, and an opinion favourable to the contention of the contractor given by the Minister of Justice, made a certificate upon a progressive estimate for the amount thus in dispute in the usual form, but added after his signature the following words : "Certified as regards item 5 (the item in dispute) in accordance with letter of Deputy Minister of Justice, dated 15th Jan., 1896." The estimate thus certified was forwarded for payment, but the Auditor-General refused to issue a cheque therefor.