

W. N. Tilley and J. J. Maclellan, for the defendants, appellants.

A. Haydon, for the railway company, appellants.

J. W. Bain, K.C., for the plaintiffs, respondents.

The judgment of the Court was delivered by FALCONBRIDGE, C.J.K.B.:—In this case, argued yesterday, my learned brethren thought that the appeals should both be dismissed.

I reserved judgment that I might look into the authorities cited. After an examination of these, I am unable to give effect to Mr. Tilley's argument.

The only possible doubt left was as to costs; but, in addition to the circumstance that costs are in the discretion of the trial Judge, is the rule, generally followed, that if the defence, however *bonâ fide*, be unreasonable, the party so offending is not entitled to be recouped his costs by another to whom he looks for indemnification.

Here the defendants should not have contested the claim of the plaintiffs, but should have paid without suit—then they might have sued those liable to them, if so advised.

The appeals should be dismissed with costs.

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APRIL 22ND, 1915.

CANADIAN MALLEABLE IRON CO. v. ASBESTOS MANUFACTURING CO. LIMITED AND CREEPER & GRIFFIN LIMITED.

*Contract—Agreements for Supply of Roofing Material and Construction and Placing of Roof—Defective Material—Defective Workmanship—Breach of Contract—Guaranty—Damages—Costs.*

Appeal by the defendants the Asbestos Manufacturing Company Limited from the judgment of BRITTON, J., 7 O.W.N. 787.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

H. E. Rose, K.C., and J. W. Pickup, for the appellants.

C. A. Moss, for the defendants Creeper & Griffin Limited.

W. H. Wright, for the plaintiffs, respondents.

THE COURT dismissed the appeal with costs.