

The next and only remaining point is the interpretation of the word "clear." On the evidence I find, and without evidence I should have found, that a shaft is 5 ft. x. 7 ft. "clear" only when, whether vertical, oblique, or horizontal, it could be described (mathematically speaking) as a right parallelopipedon 5 ft. x 7 ft.

A third point I do not think necessary to decide, though even on that ground, as at present advised, I think the plaintiff should fail. Whether the contract was oral or written, it was a term that the last 25 per cent. of the contract price should not be paid without "production of satisfactory evidence that all wages and material has been paid for." Even after trial there remained some wages unpaid, and at no time was there or could there be "evidence that all wages had been paid for."

Nothing done by the defendants, in my view, constituted a waiver. The plaintiff then fails. In respect of the counterclaim I am not entirely satisfied with the alleged cost of removing the "belly." If both parties agree, I shall fix that at \$500; but either party may have a reference at his own peril, in which case I shall reserve to myself all questions of future costs and further directions. The plaintiff will pay the costs of action and counterclaim up to and including judgment.

With this adjudication, the parties can, no doubt, agree upon the proper judgment to be drawn up; if not, I may be spoken to. The parties will have until 31st October to exercise the option to take a reference.

OCTOBER 18TH, 1907.

DIVISIONAL COURT.

RE HALLIDAY AND CITY OF OTTAWA.

Municipal Corporations—Ontario Shops Regulation Act—Early Closing By-law Affecting Class of Traders—Time for Passing—Application of Members of Class—Majority—Computation—Certificate of Clerk of Municipality—Withdrawal of Names of Applicants—Quashing By-law.

Appeal by the city corporation from order of BRITTON, J., ante 46, quashing by-law.

Taylor McVeity, Ottawa, for appellants.

J. R. Code, for Halliday.