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APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

JUNE 12TH, 1916.

*GALBREATH v. CRICH.

Contract—Building Contract—Work not Finished owing to Subsidence—Contractor's Work Improper from Beginning—Intervention of Municipal Building Inspector—Direction of Owner for Substituted Work—Liability to Pay for—Money Paid to Remedy Improper Work—Damage to Owner—Assessment of Damages—Reference—Costs.

Appeal by the defendant from the report of R. S. Neville, K.C., Official Referee, in an action to enforce a mechanic's lien, finding \$399.50 due to the plaintiff for work done under a building contract.

The plaintiff, an excavator, by the contract undertook to do necessary excavating and to build a concrete retaining wall where necessary, put in two windows and a door, for \$175; this was to include all material necessary, also supporting through centre of cellar; and a concrete floor was to be put in for \$33.50. Payment was to be made "on completion of job."

When the excavation was substantially finished, the stone foundation wall, which was to be supported by the cement retaining wall, slipped, and let the building down; and the cement wall could not be completed as contemplated. The plaintiff called in one Fess, who jacked up the building, charging \$75 therefor. Afterwards, the municipal building inspector insisted on a change of plan, and the plaintiff built a solid cement cellar wall to support the building.

The Referee allowed the plaintiff the cost of the whole work, done partly under the contract and partly as necessitated by the subsidence, at \$324.50, plus the \$75 paid to Fess.

*This case and all others so marked to be reported in the Ontario Law Reports.