

CURLEY v. VILLAGE OF NEW TORONTO—CLUTE, J.—APRIL 7.

*Contract—Claim for Payment for Work Done — Extras — Counterclaim — Delay.*]—The plaintiff claimed payment for work done in the construction of the plant necessary for the completion of a system for the supply of water necessary for the village, under four separate contracts for: (1) pump and filter house; (2) reinforced concrete pump well and protecting wall; (3) laying intake pipe; (4) laying water mains. The plaintiff also claimed payment for work done outside of the contracts, and damages by reason of the defendants' delay in delivering water mains. The defendants counterclaimed damages for the plaintiff's delay in completing the work under the contracts. The case was tried without a jury at Toronto. Judgment was reserved, and was now given in favour of the defendants, for reasons stated in writing. The learned Judge finds as a fact that none of the contracts has been cancelled or has otherwise come to an end; and that the plaintiff is not entitled to succeed upon his claim under any of the contracts. In regard to extras, the learned Judge refers to a clause, contained in all the contracts, which provides that the defendants shall not be liable for extras supplied by the contractor which are not provided for in the plans and specifications or required by the written instructions of the engineer; and says that all the alleged extras arose out of these contracts, and are subject to the terms therein provided; and it is clear that the plaintiff is not entitled to recover anything in the present action. Reference to *Silby v. Village of Dunnville* (1880-83), 31 U.C.C.P. 301, 8 A.R. 524; *Waterous Engine Works Co. v. Town of Palmerston* (1891-92), 20 O.R. 411, 19 A.R. 47, 21 S.C.R. 556; *Hudson on Building Contracts*, 3rd ed., vol. 1, p. 436. Action dismissed with costs; counterclaim dismissed without costs. J. J. Gray, for the plaintiff. W. A. McMaster and A. J. Anderson, for the defendants.

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SIMMONS v. POWELL—BRITTON, J.—APRIL 9.

*Easement—Right to Use Vacant Land for Turning Vehicles — Prescription — User—Evidence — Statute of Limitations — Unity of Title and Possession.*]—Action for an injunction restraining the defendants from building on or in any way using or dealing with that part of lot 297 on Princess street, in the city of Kingston, owned by the defendant Charles H. Powell and