

all proceedings therein. See *Clarkson v. Davies* (1920), ante 62, 125. ORDE, J., in a written judgment, said that all the points made by counsel for the applicants were, in his (the learned Judge's) opinion, matters to be determined by the trial Judge, and should not be dealt with on this motion. The second action was not of such a character that it ought to be stayed pending the completion of the trial of the first action. Merely to stay the second action would probably result in the very thing of which counsel for the applicants complained, that is, a second trial involving substantially the same issues as the first. And it would be obviously unjust to grant a perpetual stay of the second action. Substantial justice to all parties would be secured by directing that the second action be tried immediately after the conclusion of the trial of the first action, but reserving power to the trial Judge to direct that the two actions may be tried together or that such evidence as may be common to both actions shall be taken at the same time, as the trial Judge may see fit; and it should be so ordered. The costs of both motions should be costs in the cause, to be dealt with as the trial Judge may see fit. J. H. Fraser, for the applicants. J. W. Bain, K.C., and M. L. Gordon, for the plaintiff. J. M. Godfrey, for the defendant Deacon. J. J. Maclellan, for the defendants Galbraith and Lytle.

MILLER V. HUNT—LATCHFORD, J.—MAY 1.

Contract—Building Contracts—Amount Due to Contractor—Amount Overpaid to Contractor—Claim and Counterclaim—Evidence—Findings of Fact of Trial Judge—Dismissal of Contractor—Justification.—The plaintiff's claim was upon two contracts, each for the erection of a dwelling-house for the defendant—one in Hillsdale avenue and the other in Stibbard avenue—and for \$300 for the preparation, at the defendant's request, of floor-plans for a third house. The defendant counterclaimed for moneys overpaid the plaintiff. The action and counterclaim were tried without a jury at a Toronto sittings. LATCHFORD, J., in a written judgment, said that the plaintiff alleged that no amount was agreed to be paid in respect of the building in Hillsdale avenue; but that he was to be paid the reasonable value of the material, labour, and services supplied and rendered, and a fair profit for himself. The learned Judge finds, on the evidence, that the contract for the Hillsdale avenue house was for an amount certain—\$4,200. There were some extras, which brought the amount up to \$4,340. The defendant paid to the plaintiff and to creditors of the plaintiff sums aggregating \$4,788.55, or \$448.55 in excess