

3. The bank was entitled to hold the note for payment of any overdrafts allowed or discounts made on the strength of it, which were a sufficient consideration. *Oldershaw v. King*, 2 H. & N. 399, 517, and *Crears v. Hunter*, 19 Q.B.D. 341, followed.

4. As these had all been paid off, there was no consideration left, and the plaintiffs were entitled to a declaration that they were not liable to the bank on the note.

*Coyne*, for plaintiffs. *Dennistoun*, K.C., and *Craig*, for defendants.

Mathers, G.J.]

[Feb. 15.

GRACE v. OSLER.

*Building contract—Damages for delay in completion—Termination by owners of the employment of the contractors before completion—Liability of contractor for results of accident caused by his negligence.*

When pursuant to the terms of a contract for the erection of a building, the owners terminate the contract before completion and take over and complete the work themselves, although it is a term of the contract that the contractors shall pay as liquidated damages a fixed sum for every day's delay in completion beyond the time fixed by the contract, no such damages should be charged to the contractors for any time beyond the date when the contract was so terminated and the work taken over, unless there is something in the contract to take it out of the principle laid down in 3 Halsbury's Laws of England, s. 514. *Yeadon Water Works Co. v. Burns*, 72 L.T. 538, followed.

Neither would the owners be entitled to unliquidated damages for delay beyond the date when they terminated the contract: 1 Hudson, 543.

The defendants terminated the contract and took over the work because the foundation gave way and the walls subsided in consequence of an accident for which the trial judge held the plaintiffs responsible. The plaintiffs commenced this action before the defendants had completed the building.

*Held*, that the action must fail and that the defendants were, under the contract, entitled on their counterclaim to the following classes of damages. (1) Any excess of the expense of completing the building according to the original plans and specifications over the unpaid balance of the contract price. (2) Damages caused by the accident to the owner of an adjoining building