

Com Pleas.

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NOTES OF CANADIAN CASES.

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woman, and this action was brought. The defendant denied the promise. In his examination before the trial he admitted visiting the plaintiff, and of talking to her of marriage, but he said it was not of their marriage but that of other persons; that when he visited her she was alone and he kissed her. In corroboration of the plaintiff's evidence a witness stated that in the fall of 1882 he had a conversation with plaintiff who, referring to some girls who visited his house, said he was not going to marry those who wanted his house, but the girl who wanted him; and on witness saying he supposed this was the plaintiff, the defendant answered "yes." The witness stated that in the next spring or the one following after that, he had a further conversation with defendant, when defendant said he was either going to rent or sell his house or get married, when witness said that he supposed plaintiff and defendant would soon make the match, to which the defendant made no reply.

Held, that the action was not maintainable.

Per CAMERON, C.J.—The promise stated by the plaintiff was sufficiently corroborated, but the action was barred by the statute of limitations.

Per GALT, J.—Without expressing any dissent from the opinion of CAMERON, C.J., on the statute of limitations, the plaintiff's evidence was not sufficiently corroborated.

Per ROSE, J.—The action was barred by the statute of limitations.

Tetzel, for the plaintiff.

Falconbridge, Q.C., and *Gwyn*, for the defendant.

ARDAGH V. THE CORPORATION OF THE CITY OF TORONTO.

Contract—Written certificates—Necessity for—Final certificate.

The plaintiff entered into a contract with the defendants to construct a cedar block roadway, etc., according to plans and specifications, and to the directions and satisfaction of the city engineer, etc. Payments to be made monthly at the rates mentioned in the tender during the progress of the work, upon the engineer's certificate and the chairman of the committee, according to the provisions of

the By-law No. 1107, relative to corporation contracts, which were incorporated with the contract. No money was to become due or payable on the contract until such certificate was granted, and a drawback of 15 per cent. of the amount appearing by any contract to be due was to be retained by the corporation for six months from the date of the final certificate showing the satisfactory completion of the work. The provisions of the by-law were that no contractor, etc., should be paid the compensation allowed him (unless otherwise provided for by the contract) or any part thereof, unless at the time of paying the same he should present to the Treasurer a certificate from the engineer, etc., stating that he had examined, measured, and computed the work, and that the same was completed, or that the payment demanded was due on such work; and also stating what the work was on which such money was due. Also that every account before being paid should be certified by the city engineer, and by the committee under whose authority the work was done; and that the treasurer should not pay such accounts unless furnished with the two certificates. By the specifications the engineer was to be the sole judge of the quantity and quality of the work done, and his decision was to be final and conclusive as against the contractor; that monthly payments up to 85 per cent. of the work done should be made in the first week of the following month on the measurement of the engineer, such certificates to be binding only as to progress, and in no way to affect the final certificate, which should only be given on the whole work being completed and measured up, and at the expiration of six months when a certificate for the balance should be issued by the engineer. In an action to recover an alleged balance due under the contract.

Held, that to entitle the plaintiff to recover the amount due under the contract on the completion of the work, he must produce a written certificate thereof, and that an oral certificate was not sufficient; and the evidence set out in the case showed that no final certificate, as required, had been issued.

Leant, Q.C., and *Pearson*, for the plaintiff.

Robertson, Q.C., and *J. B. Clarke*, for the defendants.