

The presumption is created when something active is done, amounting to a wilful obstruction or prevention.

Upon the ground of the absence of evidence, the conviction cannot be sustained, and must be quashed. There will be an order for protection; and no costs are awarded.

DAVID DICK & SONS LIMITED V. STANDARD UNDERGROUND CABLE Co.—MIDDLETON, J.—SEPT. 30.

Contract — Breach — Delay — Damages — Counterclaim — Interest—Costs—Third Parties.—Action by a contracting company to recover damages for non-delivery of steel to complete their work on a contract and for loss on other contracts. The defendants counterclaimed for \$33,197.75, moneys alleged to have been paid by the defendants on the plaintiffs' account in connection with the completion of the work under the contract. The Hamilton Bridge Works Limited were brought in as third parties. The trial was before MIDDLETON, J., without a jury, at Hamilton and Toronto. At the trial all the questions in issue between the plaintiffs and defendants were disposed of, except that relating to the liability of the defendants owing to the delay in the supply of steel necessary for the construction work. MIDDLETON, J., said that, after considering the matter very carefully, he could see no reason for discrediting the evidence given on behalf of the third parties, shewing that the delay in the furnishing of the steel was to be attributed to the action of the general manager of the plaintiffs; and, in the light of this evidence, the plaintiffs could not recover. Action dismissed. The plaintiffs' damages assessed provisionally at \$1,000. Leave reserved to apply in this action with respect to any sums which the defendants may be called upon to pay to lien-holders not included in the sum of \$15,701.14, paid by the defendants, over and above the contract-price, to complete the contract. Judgment for the defendants upon their counterclaim for \$15,701.14 with interest from the time the money was paid. The defendants to have the costs of both action and counterclaim against the plaintiffs. The issue between the defendants and the third parties may be spoken to. J. L. Counsell, for the plaintiffs. D. L. McCarthy, K.C., and G. H. Levy, for the defendants. I. F. Hellmuth, K.C., and E. H. Ambrose, for the third parties.