

WEDDELL v. LARKIN & SANGSTER—MASTEN, J.—AUG. 7.

Contract—Work Done under Sub-contract for Contractors with Crown—Dispute as to Amounts Due to Sub-contractor under Various Heads—Report of Master—Variation on Appeal.—An appeal by the defendants from a report of the Local Master at Belleville. The appeal was heard in the Weekly Court, Toronto. MASTEN, J., in a written judgment, said that the plaintiff was a sub-contractor under the defendants for work on the Trent Valley Canal, for which the defendants had a contract with the Crown. Disputes having arisen between the parties as to the amount payable by the defendants to the plaintiff, the plaintiff brought this action to recover the amount which he asserted to be due. The action was tried by CLUTE, J., and a judgment was pronounced by which many of the questions raised were finally determined. By para. 2 of the judgment, it was adjudged that the claim of the plaintiff be allowed to the extent of the sum required to reimburse him at cost for work done by him subsequent to the 25th July, 1913, between stations 66 and 67.75, by way of additional drilling and blasting necessary to complete and facilitate the work there in question, and that it be referred to the Master to inquire and state the sum. By para. 5, the Master was also to inquire and state the sum due to the defendants upon their counterclaim. By his report the Master, in addition to an allowance for drilling and blasting, had allowed \$1,924 for "dredging" and a like sum for "sweeping, diving, and finishing." These items were beyond the scope of the reference and must be disallowed. The defendants also attacked the allowance by the Master of \$3,376 for drilling and blasting. Upon the evidence, this item should be reduced by \$818.24, leaving a balance of \$2,557.76. The Master allowed \$1,500 in respect of the counterclaim, and this, the defendants contended, was inadequate. Upon the evidence, the learned Judge was of opinion that it should be increased to \$2,500. Having regard to these conclusions, the balance due to the plaintiff should be reduced to \$3,518.59, and the defendants should have the costs of the appeal. A. M. Stewart, for the defendants. E. G. Porter, K.C., for the plaintiff.