

CANADIAN WESTINGHOUSE CO. v. WATER COMMISSIONERS FOR CITY OF LONDON—MASTER IN CHAMBERS—NOV. 19.

Pleading—Particulars—Counterclaim—Leave to Rejoin—Examination for Discovery.—Motion by defendants for particulars of reply and for leave thereafter to rejoin thereto, and that plaintiffs plead to defendants' counterclaim. The facts as set out in the pleadings are as follows. By agreement made in April, 1910, plaintiffs undertook to do certain work for the commissioners to their satisfaction and that of their electrical engineer for the time being—the work to be completed in six months—for which plaintiffs were to be paid \$25,145—that such payment was conditional as to amount on the certificate of the engineer, whose decision as to any question arising on the agreement was to be final—that if the works in question were not completed by 28th October, 1910, the plaintiffs were to deduct from the contract price \$100 a day as liquidated damages until the final completion of the contract—and that by reason thereof, instead of plaintiffs being entitled to \$5,500 and interest from 1st March, 1911, as set out in the statement of claim, they have been overpaid and defendants counterclaim for this though not stating any amount. It is also said that no certificate has been given by the engineer. The reply joins "issue to the allegations contained in the statement of defence and puts the defendants to the proof thereof." It further says that the delay in completion of their contract was caused by "failure of defendants to do the preliminary work required" for that purpose—that the refusal of the engineer to give the necessary certificate was fraudulent and from collusion with the defendants—that defendants suffered no damage by the delay in the completion of the work and in any case "by their action" waived their right to enforce the above mentioned penalty or to insist on the engineer's certificate. Particulars are asked as to the preliminary work referred to in the reply—of the fraud and collusive refusal of the engineer to give his certificate, and of the acts whereby the defendants waived their right to require such certificate, or enforce the penalty of \$100 a day. The Master, after stating the facts as above, said that the issues between the parties seemed sufficiently set out in the pleadings, even if the statement of defence, as well as the reply are somewhat unusual in form, and that it scarcely seemed necessary to make the reply a formal defence to the defendants' counterclaim, but it could be done if thought safer to do so. As to the particulars, he said that they could probably be obtained on examina-