

Burbidge, J.] ARCHIBALD STEWART v. THE KING. [Feb. 26.

*Contract for public work—Delay in executing same—Notice by engineer—
Withdrawing work from contractor—Damages—Plant—Interest.*

Petition of right.—There may be a question as to whether *Walker v. London, &c., R. Co.*, L.R. 1 C.F.D. 518, should be accepted as establishing a general proposition that if in contracts creating a forfeiture for not proceeding with work at the rate required, a time is fixed for its completion, the forfeiture cannot be enforced on the ground of delay after that date.

But at all events, any notice given after such date to determine the contract, and enforce the forfeiture, must give the contractor a reasonable time in which to complete the work, and the contractor must, with reference to such reasonable time for completion, make default or delay in diligently continuing to execute or advance the work to the satisfaction of the engineer. The engineer is to decide, having regard to a time that in the opinion of the court is reasonable, and the contractor is to have notice of his decision.

Where there is a breach of contract the damages are to be measured as near as may be by the profits the contractor would have made by completing the contract in a reasonable time.

In this case the contractor claimed for loss of profits in respect of certain extra work not covered by the contract: *Held*, that inasmuch as it was not possible to say either that the engineer would have directed it to be done by him had the work remained in the suppliant's hands, or that in case the engineer had done so, that he would have fixed a price for it from which a profit would have been derived, it could not be taken into consideration.

Where in such a case the Crown dispossessed the contractor of his plant and used for the purposes of the completion of the work, the contractor was held entitled to recover the value of such plant as a going concern, that is, its value to anyone situated as the contractor himself was at the time of the taking of the plant.

Where the contractor was not allowed interest upon the value of such plant, it was held that he was not to be charged with interest upon the balance of the purchase price of a portion of the plant which, with his consent, the Crown had subsequently paid.

Hogg, K.C., and *Glyn Osler*, for suppliant. *S. H. Blake*, K.C., *W. A. H. Kerr* and *W. H. Lawlor*, for respondent.

[ON APPEAL FROM TORONTO ADMIRALTY DISTRICT.]

Burbidge, J.] [April 2.

ROCHESTER & PITTSBURG COAL AND IRON CO. v. THE SHIP "GARDEN CITY."

Necessaries supplied to ship—Owner domiciled in Canada—Jurisdiction.

Held, (affirming the judgment of McDougall, Loc. J.,) that no action