

BURBIDGE, J.]

[March 2.]

DAMASE LAINE & CIE v. THE QUEEN.

Contract for work and labour—Specifications—Interpretation of—Accident to subject-matter interfering with performance—Liability—Interest allowed against the Crown in cases arising in Province of Quebec.

The suppliants entered into a contract with the Crown to "place a second-hand, compound screw surface condensing engine" in a certain steamship belonging to the Dominion Government. That was the character of the work to be done as expressed in the body of the contract. However, by the specifications annexed to and forming part of the contract, it was stipulated, inter alia, that the old engine and paddle-wheels were to be broken and taken out of the steamer at the contractor's expense, the old material to be their property, and that they should stop up all the holes both in the bottom and side of the vessel; that the contractors were to make new any part of the engine or machinery, although not named in the specifications, which might be required by the Minister, etc., and to complete the whole ready for sea to the satisfaction of the Minister, etc.; the whole to be completed and ready for sea, on a full steam pressure of 95 lbs. per square inch, ready to commence running on a certain date; the whole work to be in first-class style and to the entire satisfaction of the engineer appointed to superintend the work. It was further agreed that the steamer was "to be put in perfect running order;" that the alterations of any parts of the steamer, for the purpose of fitting up the new works, and any openings or cuttings or rebuilding, were to be executed and furnished at the cost of the contractors; and any work done or alteration made in the deck, or any displacement of iron or wood work, was to be done and replaced to the satisfaction of the officer in charge, free of cost to the Department. It was also provided that the steamer was to have a satisfactory trial trip of at least four hours' duration, steaming full speed, before being handed over to the Department; that the contractors were to repair and make good any defect or damage that might occur to the new parts within four months after the final acceptance of the same by the Department.

The vessel was built of iron and very old. The suppliants had taken the old engine out of the hull, and had grounded her, preparatory to placing her in a dry dock in order to complete their work under the contract. Owing to the fact that the bottom of the vessel under the old engine seat had been eaten away by rust, it gave way and was broken in when she grounded. It was established that the accident did not occur through the negligence of the suppliants; but the Crown insisted that the suppliants were liable to repair this damage under the terms of the contract and specifications.

Held, 1. That there was nothing to show by the terms of the contract and specifications that either party at the time of entering into the contract contemplated that the portion of the steamship lying below and hidden by the engine seat would require renewing; and that the stipulation in the specifications that "the steamer was to be put in perfect running order," was intended to apply only to the work the suppliants had expressly agreed to do, and should not be extended to other work or things which they did not agree to