

In these circumstances, we ought not, in my opinion, to interfere with the finding that there was in fact no such open sewer at or near the place of the accident, nor with his judgment accordingly in plaintiff's favour.

The damages are not, I think, excessive, or so excessive as to justify any interference by this Court.

Appeal dismissed with costs.

MARCH 17TH, 1905.

C. A.

ISLOANE v. TORONTO HOTEL CO.

*Contract—Work and Labour—Damages for Preventing Contractor from Executing and for Cancelling Contract—Conduct Justifying Cancellation—Refusal to Proceed—Architect's Certificate—Delay—Evidence—Questions of Fact—Appeal.*

Appeal by defendants from judgment of IDINGTON, J., in favour of plaintiffs for the recovery of \$13,480 in an action to recover damages from defendants for preventing plaintiffs from executing a contract with the defendants for the decoration of the walls and ceilings of certain portions of the King Edward hotel in the city of Toronto, and for cancelling the contract and discharging plaintiffs from doing the work under it.

The appeal was heard by MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN. JJ.A.

W. R. Riddell, K.C., and T. P. Galt, for defendants.

J. H. Moss and C. A. Moss, for plaintiffs.

MOSS, C.J.O.:—The agreement was set forth in a letter written by or on behalf of defendants, dated 8th May, 1902, and was subsequently embodied in a formal instrument under seal. Briefly plaintiffs undertook the work of decoration of the rooms, lobbies, and corridors of the 3rd, 4th, 5th, 6th, 7th, and 8th flats or floors of the hotel, supplying the material and doing the labour in accordance with the plans and specifications and to the satisfaction of the architect, in such manner and with such expedition as the architect might direct, and all to be completed on or before 15th August, 1902. The term as to the date of completion proved impossible by reason of defendants not being ready to admit plaintiffs to proceed with their work until long after that date. For the work thus contracted for, plaintiffs were to be paid \$41,000. The formal contract, which was not executed until November,