

UNIVERSITY OF LONDON
W.C.1
24 OCT 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES.

APPELLANTS' CASE.

In the Privy Council.

*On Appeal from the Court of Queen's Bench, for the
Province of Quebec (Appeal Side.)*

BETWEEN

EDWARD MOORE and AUGUSTUS R. WRIGHT,
(Defendants,) Appellants.

AND

SIMON PETERS, *Plaintiff, (Deceased.)*

AND

¹⁰ ELIZA JANE LAMOUREUX, Henry Joseph Peters, Albert Hyacinthe Peters,
Joseph Bernard Peters and Martial Chevalier.
(Plaintiffs in continuance of suit.) Respondents.

CASE OF THE APPELLANTS.

1. This is an Appeal from a judgment of the Court of Queen's Bench for the Province of Quebec, (Appeal Side) delivered on the 29th day of March, 1897 allowing in part an Appeal brought by the present Appellants against a judgment of the Superior Court for the Province of Quebec, rendered at the City of Quebec, on the 30th June, 1896.

²⁰ 2. The Appellants were the Defendants in an action instituted by Simon Peters, deceased, now represented by the Respondents, before the Superior Court for the Province of Quebec, at the City of Quebec, on the 16th of October, 1893, arising under the following circumstances.

3. On the 2nd of May, 1877, the Appellants and the late Simon Peters, contracted under the name of Peters, Moore & Wright, with the Quebec Harbour Commissioners, for the construction of a dock in the Harbour of Quebec, which subsequently became known as the "Princess Louise Dock."

4. The material clauses of this Contract are as follows:

"Therefore, these presents and I, the said Notary, witness that the said Record, " Simon Peters, Edward Moore and Augustus R. Wright, did and do hereby p. 15, l. 7.

“ undertake and promise, bind and oblige themselves, their heirs, and assigns,
 “ to construct and complete in a good substantial and workmanlike manner
 “ to the satisfaction of the said Quebec Harbour Commissioners and their
 “ Engineers (hereinafter named) the said proposed works in and upon the
 “ property and lands of the said Quebec Harbour Commissioners and the
 “ foreshore situate between the ballast wharf and the Gas Works at the
 “ mouth of the said River St. Charles.

“ And which said proposed works shall consist of and comprise all and
 “ several the works described in the specification, bills of quantities and
 “ form of tender and conditions therein contained and also in the supple- 10
 “ mentary particulars and in the supplementary tender hereunto annexed and
 “ which are signed by the parties hereto, the intervening parties hereinafter
 “ named and the said Notary, *ne varietur*, which said works shall be in
 “ accordance with the drawings numbered one (1), to twenty-one (21) and
 “ number twenty-one A (21 A) inclusive, prepared by Messrs. Kinipple &
 “ Morris of Westminster and Greenock, Engineers of the said Quebec
 “ Harbour Commissioners, which said drawings have been signed by the
 “ said parties hereto, by the intervening parties hereinafter named and by
 “ the undersigned Notary, *ne varietur*, and also in accordance with all other 20
 “ future detailed working drawings, which the said Engineers may consider
 “ necessary from time to time in the carrying out of the said proposed
 “ works, and also in accordance with the said specification, bills of quantities
 “ and form of tender and conditions therein contained prepared by the said
 “ Engineers and issued by the said Quebec Harbour Commissioners with
 “ regard to the said first tender.”

“ It is hereby agreed by and between the said parties to these presents
 “ and the intervening parties to these presents hereinafter named, that the
 “ Quebec Harbour Commissioners shall have the power and right under
 “ the present contract to substitute a stone facing backed with eight to one
 “ Portland cement concrete to the quay walls in accordance with the plan 30
 “ or drawing numbered (22) twenty-two and the specification lettered B
 “ annexed to these presents and signed by the parties hereto, by the inter-
 “ vening parties hereinafter named and by the said Notary, *ne varietur*, for
 “ the whole length of the walls (three thousand five hundred and fifty feet
 “ in all) or for any less length thereof, in lieu of the fine Portland cement
 “ concrete and timber face as shown on the contract drawing, for the sum
 “ of eighteen thousand three hundred and ninety-three dollars and fifty-
 “ eight cents, Canada currency, (\$18,393.58) for the whole length of walls
 “ or a proportionate sum for any length of such walls as may be ordered,
 “ such sum of eighteen thousand three hundred and ninety-three dollars 40
 “ and fifty-eight cents or any portion of the same becoming due to the con-
 “ tractors according to this clause to be considered as extra work and paid
 “ for as such, but further it is understood and agreed that in the event of
 “ the Commissioners ordering the stone face to be substituted for the timber
 “ and concrete face for the whole length of the walls or any portions thereof,

“ it shall not in any way render void, novate or vitiate any of the stipulations and conditions of the contract nor in any way release the parties or intervening parties who do signify their approval of this clause by their initials.

“ And it is hereby understood and agreed by and between the said Record, parties to these presents, including the intervening parties hereinafter p. 17, l. 43. named, that in the event of any difference of opinion arising between the Engineers of the said Quebec Harbour Commissioners, and the said contractors regarding the interpretation to be given to any clause or matter contained in the said supplementary particulars and supplementary tender the same shall be decided by the said Engineers.

“ The present contract is thus made and entered into by and on the part of the said Simon Peters, Edward Moore and Augustus R. Wright, for and in consideration of the price or bulk sum of five hundred and fifty-four thousand two hundred and ninety-six dollars and thirty-one cents, current money of Canada, including a provisional sum of twenty-five thousand dollars as per clause fourteen on page five of the said specification and also mentioned in form A of the said supplementary tender, which said sum of money shall be payable by the said Quebec Harbour Commissioners to the said Simon Peters, Edward Moore and Augustus R. Wright in accordance with the terms and conditions in the said specification, bills of quantities and form of tender and conditions therein contained, mentioned and contained.

The material clauses of the specification which formed part of the contract are as follows :

“ 6. The whole of the works are to be carried out exactly in accordance Record, with the Contract Drawings hereunder mentioned, numbered 1 to 21 and p. 26, l. 3. 21 A inclusive, and any other Drawings which may be supplied to the Contractor from time to time, and signed by the Engineers; and of the lengths, breadths, depths, dimensions, and descriptions as hereinafter specified, but subject to any modifications, alterations, increase or diminution of scantling, deductions, additions or variations that the Engineers may deem to be necessary from time to time during the progress of the work and the continuance of this Contract.

“ 9. The works are to be chiefly of crib work (but differing from that of the ordinary construction), founded on a stratum of clayey materials and stones laid in a dredged trench. The crib work is to be partly filled in with Portland cement concrete, and stone, clay and other suitable filling. The upper portion of the quay wall, from about four feet above low water, is to be of timber, backed with Portland cement concrete, and rubble concrete. A channelway, having a bottom width of 150 feet, is to be dredged along the front of the quay to a depth of 24 feet below datum

“ or low water at the South Tidal Harbour portion of the quay wall, and to
 “ a depth of 10 feet below low water at the South Wet Dock portion of
 “ the wall. The dredged materials are to be deposited in the embankment
 “ behind the quay walls, as may be directed from time to time by the
 “ Engineers.

Record.
 p. 27, l. 46.

“ 19. A formal contract is to be prepared and executed between the
 “ Commissioners and the Contractor by the legal adviser to the Commis-
 “ sioners, at their joint expense, and deposited with the Commissioners.
 “ The contractor will be provided with a copy thereof, but should he re-
 “ quire a duplicate original of the Contract, the same will be furnished to 10
 “ him at his own expense.

“ 23. The works are to be under the full and entire direction and
 “ control of the Engineers, or any of their Assistants, Superintendents,
 “ Inspectors or Clerks of Works, who may be appointed from time to time,
 “ either by the Commissioners, or their Engineers, Messrs. Kinipple & Morris
 “ of Westminster and Greenock, and the works shall be executed, altered,
 “ enlarged, or diminished and completed by the Contractor to their entire
 “ satisfaction, and within the time stipulated in the Contract, or any extended
 “ time authorized by the Engineers.

“ 26. The Contractor is to erect, where directed by the Engineers, a 20
 “ suitable office, containing at least one room 15 feet by 10 feet clear inside
 “ dimensions ; also another room, adjoining and communicating, 10 feet by
 “ 10 feet at least, for Clerk of Works or Inspectors. The whole to be of
 “ timber properly constructed, and made wind and water tight, with all
 “ the usual and necessary fittings, inclusive of stoves and gas fittings.

“ 27. The Contractor shall erect offices upon the works or near the
 “ works for himself and his assistants and agents.

Record,
 p. 32, l. 1.

“ 48. The Commissioners, or their Engineers, shall have power to make,
 “ from time to time, any additions to or deductions from the dimensions
 “ specified or shewn on the Drawings, to add to or omit any of the works, 30
 “ or modify or alter the works and materials specified or shewn on the
 “ Drawings, as circumstances shall appear to them to require it, without
 “ rendering void or in any respect vitiating the Contract. The value of
 “ such additions, deductions, omissions, modifications, deviations, or altera-
 “ tions, is to be determined by the Engineers, according to the rates and
 “ prices in the Schedules accompanying the Tender, which prices are calcu-
 “ lated for materials and workmanship as specified and measured in the
 “ work, and include all plant, labour, machinery, temporary works, shoring,
 “ scaffolding, carriage, freight, patterns, moulds, templates, preparing, fitting,
 “ fixing, and setting the same, as before mentioned, together with all con- 40
 “ tingencies, superintendence, and profit ; but the Contractor is not to
 “ diminish the strength of the works, nor to make any alteration in the

“ mode of execution, nor to use other materials than those specified without
 “ the consent in writing of the Engineer. The contract works and altered
 “ works are at all times during their progress to be kept clear of mud, silt,
 “ or other deposit, by dredging, washing, or otherwise, and no allowance
 “ or addition to the Contract prices will be made to the Contractor for
 “ keeping the works clear of silt, mud, or other deposit, or for any alteration
 “ or increase in any temporary works which may be considered necessary
 “ for doing the work, or for preventing damage or accident. In the event
 “ of any works being ordered for which the prices contained in the Schedule
 10 “ do not apply, or are not therein contained, the Engineers shall measure,
 “ value, and price out such additions or omissions as they shall think reason-
 “ able, having due regard to the Schedule of Rates for a proportionate
 “ value, and their decision as to such value shall be final and binding on all
 “ concerned. Alterations, deductions, additions, omissions, modifications, or
 “ deviations, are to be understood as applying only to decided variations
 “ in the plan or design, such as an increase or decrease in the total length
 “ of the walls, a decrease in width, and increase in depth, or an increase in
 “ the thickness of the crib work walls, substitution of one class of materials
 “ for another, adding works neither shewn, nor described, &c.; so long as
 20 “ such alterations, additions, or deductions in their total value do not add
 “ to or deduct from the Contract amount to a greater extent than 10 per
 “ cent; for these or similar matters alone will any sums be allowed to the
 “ Contractor, or deducted from the Contract sum, and then only upon such
 “ written orders as have been given from time to time by the Commissioners
 “ or the Engineers in Chief. All other alterations, &c., consequent upon
 “ better disposal of materials, mode of construction, repairs, and such like,
 “ so long as the costliness of such materials, workmanship, &c., are of a
 “ trifling nature, in the opinion of the Engineers in Chief, shall be deemed
 “ as included in the Contract, and for which no extra sum will be allowed,
 30 “ under any consideration whatever, to the Contractor.

“ 54. The Contractor shall be paid for all work fixed and completed
 “ (subject to the conditions contained in this specification) in the following
 “ manner :—As the work proceeds and upon the certificate of the Engineers
 “ being produced to the Commissioners, advances will be allowed at the
 “ rate of 90 dollars for every 100 dollars worth of the contract and extra
 “ works executed, and the remaining 10 dollars at twelve months after the
 “ date of completion of the whole of the works. Such certificates, when
 “ granted to the Contractor, shall be subject to the conditions of the contract
 “ until the whole of the works shall have been completed, delivered to,
 40 “ and accepted by the Commissioners; and should the Contractor carry on
 “ the works in a proper and expeditious manner, so as to leave no doubts
 “ as to the whole of the works being completed within the Contract or
 “ extended times, the Engineers may from time to time, in their discretion,
 “ allow advances to be made on any approved building materials intended
 “ for use in the construction of the works, and lying upon the lands of the
 “ Commissioners.

" 55. All payments upon the Engineers' certificates will be regarded
 " as approximate value only of works executed to the date of such certi-
 " ficates, and will be made within a reasonable time after they have been
 " handed to the Clerk to the Commissioners, and no certificate at any time
 " will be granted for a less sum than 9,000 dollars, that is, for 10,000 dollars
 " worth of work executed, less 10 per cent retained. No payments on general
 " account shall be taken to be an admission of the due performance or
 " settlement of the Contract, or any part thereof, or of the accuracy of any
 " claim, nor shall they conclude nor prejudice the powers of the Engineers,
 " whether any certificates were granted by them upon the assumption 10
 " that the works were properly executed or completed or not, nor shall they
 " determine the sum or sums, or balance of money to be paid to or received
 " from the Contractor, nor in any other way vary or affect the Contract
 " entered into by the Contractor. All the accounts relating to this Contract
 " between the Commissioners and the Contractor must be submitted to and
 " adjusted and settled by the Engineers, and their certificate immediately
 " hereinafter mentioned fixing the balance due to the Contractor on the
 " completion of the works shall be conclusive and binding on both parties
 " without any appeal.

" 56. The Engineers, when the whole of the works shall have been pro- 20
 " perly and satisfactorily executed and completed, and all actions, suits, claims,
 " penalties, liabilities, outstanding accounts, costs, expenses, injuries and
 " demands whatsoever shall have been properly discharged, satisfied, paid
 " or arranged for, will grant to the Contractor a certificate for the whole
 " balance due to him of the Contract price, and for extras, if any, less 10
 " per cent, to remain in the hands of the Commissioners without interest for
 " a further period of twelve months after completion, or until the expiry of
 " the term for maintenance. On the expiry of such period the 10 per cent
 " will be paid, provided a final certificate by the Engineers that the works
 " have been upheld and maintained, in terms of the Contract, and relative 30
 " Conditions and Specifications, is delivered to the Commissioners.

" 57. The Contractor shall not be entitled to demand, and the Commis-
 " sioners shall not be bound to pay any sum of money, either for works
 " in progress or completed, or for payment on account of the Contract price,
 " or for extras alleged or admitted, until a certificate shall be granted by the
 " Engineers that such sum is due and payable.

" 59. All works as they progress will be measured from time to time
 " by the Engineers, and proper accounts, bills of quantities, or pay-bills
 " for the main works, or accounts for jobbing work, must be prepared, made
 " up and priced out according to the rates and prices of the annexed 40
 " Schedule, which include all extras for works completed. The measure-
 " ments and pay-bills for advances are to be made solely for the information
 " and satisfaction of the Commissioners or their Engineers, and they shall
 " not be allowed to constitute any legal evidence as to the facts therein

“ stated, or to be taken as a statement or rate of progress of the works at
 “ the time they were made, but shall only be considered and taken as
 “ approximate estimates and guides to the Commissioners or their Engi-
 “ neers, for regulating the amount of any advances.

“ 67. Should any disputes arise as to the true meaning and intent of
 “ the said Specification, Bills of Quantities, and Form of Tender and Condi-
 “ tions therein contained, Contract Drawings, or the formal Contract which
 “ may be executed, or about the quality of the materials, or as to the pos-
 “ session of ground, or the due and proper execution and maintenance of
 10 “ the works, as to liquidated damages for non completion of the works
 “ within the Contract time, or any extended dates for completion, or rate of
 “ progress, or as to the measurement or valuation of the works executed
 “ under this Contract, or as to alterations, deviations, additions, omissions,
 “ modifications, variations, or deductions, or as to any claim or claims which
 “ may be made or alleged by the Contractor for work extra to that specified
 “ or contracted for, or as the value of any work for which the prices in the
 “ Schedule do not apply, or as to accidents, damages, contingencies, or any
 “ other matter or thing whatsoever arising out of the Contract, the same
 20 “ shall be decided by the Engineers as sole arbitrators, and their decision
 “ shall be final and binding upon the Commissioners and the Contractor
 “ absolutely, without any power of appeal to any court of law, and the
 “ Commissioners and the Contractor shall be bound to implement and fulfil
 “ such decision.

5. On the 4th of May, 1877, the late Simon Peters, and the Respondents,
 executed a contract, the material parts of which are as follows :

“ Whereas the said parties have entered into a certain contract with Record,
 “ the Quebec Harbour Commissioners by Deed passed before Mtre. E. J. p. 2. l. 40.
 “ Angers, Notary Public, bearing date the second day of May instant, for
 “ the construction or execution of certain Harbour Improvements in the
 30 “ Harbour of Quebec in which said Deed the said Simon Peters, Edward
 “ Moore and Augustus R. Wright are associated in the contract thereby
 “ entered into, and in the execution of the said works but without any
 “ partnership existing between the said Simon Peters and the said Edward
 “ Moore and Augustus R. Wright as aforesaid. Now, therefore, these pre-
 “ sents and I, the said Notary, witness that it hath been and is hereby
 “ agreed by and between the said parties hereto that the said proposed works
 “ shall be executed by the said parties to these presents in the proportions
 “ hereinafter mentioned and that the said works shall be paid for, that is to
 “ say, that the said parties shall be entitled to participate in the monies to
 40 “ be received from the said Quebec Harbour Commissioners under the said
 “ contract as hereinafter set forth.

“ Of which said works the said Simon Peters hereby undertakes to
 “ execute and perform all the timber and iron work and pitching of outer

“ slopes and forming of roadway in accordance with the specification, bills
 “ of quantities and form of tender and conditions therein contained and with
 “ the supplementary particulars and supplementary tender annexed to the
 “ said deed and also in accordance with the drawings numbered one to
 “ twenty-one and twenty-one A and twenty-two, inclusive prepared by
 “ Messrs. Kinipple & Morris, Engineers, of the said Quebec Harbour Com-
 “ missioners, referred to in the said Deed and signed by the parties and
 “ intervening parties thereto and by the said Mtre. E. J. Angers, Notary,
 “ and in accordance with all other future working drawings which the
 “ said Engineers may consider necessary from time to time in the carrying 10
 “ out of the said proposed works ;

“ Which said works the said Simon Peters did and doth hereby promise,
 “ bind and oblige himself, his heirs and assigns to complete and finish in a
 “ good, substantial and workmanlike manner, to the satisfaction of the said
 “ Quebec Harbour Commissioners and of their Engineers aforesaid within
 “ the time specified in the said main contract, to wit: within forty-one
 “ months from the date of the said contract in such sort that the said Moore
 “ and Wright be subjected to no delay or loss by the said Simon Peters by
 “ reason of the non completion within the time above specified or bad or
 “ imperfect execution of the said works so to be executed by the said Simon 20
 “ Peters as his portion of the said works so contracted for as aforesaid ;

“ And on their part the said Moore & Wright hereby promise, bind
 “ and oblige themselves, their heirs and assigns to execute their portion of
 “ the said proposed works to wit, all the works contracted for as aforesaid
 “ under the aforesaid deed, save and except those hereby specially under-
 “ taken by the said Simon Peters.

“ Which said works the said Moore & Wright shall execute and com-
 “ plete in a good, substantial and workmanlike manner to the satisfaction of
 “ the said Quebec Harbour Commissioners and of their said Engineers, and
 “ in accordance with the said specification, bills of quantities and form of 30
 “ tender and conditions therein contained and supplementary particulars
 “ and supplementary tender as modified, certified and annexed to the said
 “ main Contract as aforesaid, and in accordance with the said drawings num-
 “ bered one to twenty-one and twenty-one A, and twenty-two inclusive and
 “ identified as aforesaid and in accordance with all other future working
 “ drawings which the said Engineers may consider necessary from time to
 “ time in the carrying out of the said proposed works.

“ Which said works the said Moore & Wright did and do hereby
 “ promise, bind and oblige themselves, their heirs and assigns to complete
 “ and finish as aforesaid within the time specified in the said main contract 40
 “ to wit, within forty-one months from the date thereof in such sort that the
 “ said Simon Peters be subjected to no delay or loss by the said Moore &
 “ Wright by reason of the non completion within the time above specified

" or bad or imperfect execution of the said works so to be executed by the
 " said Moore & Wright as their proportion of the said works so contracted
 " for, as aforesaid.

10 " And it is hereby agreed by and between the said parties to these
 " presents, that they, the said parties to these presents, shall be paid by the
 " said Quebec Harbour Commissioners for their aforesaid works as the same
 " shall progress, in accordance with the schedules of prices annexed to the
 " said Main Contract and upon the certificates to be granted to the said par-
 " ties hereto by the Resident Engineer for the time being of the said Que-
 " bec Harbour Commissioners; and in consideration of the said Simon Peters
 " having associated the said Moore & Wright with him, the said Simon
 " Peters, in the said Main Contract, he, the said Simon Peters, shall be entitled
 " to receive from the said Moore & Wright and they, the said Moore &
 " Wright, hereby bind and oblige themselves, their heirs and assigns, to pay
 " him, the said Simon Peters, a sum of five thousand dollars current money
 " of Canada, payable in gold on the day of the final settlement with the said
 " Quebec Harbour Commissioners in regard to the said Main Contract in
 " addition to all monies which the said Simon Peters may be entitled to
 " receive from the said Quebec Harbour Commissioners under and in virtue
 20 " of the said Main Contract.

" And it is hereby further agreed upon, that with respect to any inci-
 " dental expenses attending the said works which have hitherto been unan-
 " ticipated or unprovided for, the same shall be borne by the said parties to
 " these presents *pro rata* to the value (to be established by the schedule of
 " of prices annexed to the said main contract) of the amount of works to be
 " by them respectively executed under this contract. It is hereby agreed
 " that the temporary boarding at the end of the crib work blocks and the
 " two temporary braces shewn in the same shall be removed by the said
 " Moore & Wright at their expense.

30 " And whereas it hath been stipulated in and by the said Main Con-
 " tract that it shall be optional with the said Quebec Harbour Commission-
 " ers to demand that a certain wall, mentioned in the specification lettered
 " B, and annexed to the said Main Contract, be faced with stone, it is hereby
 " agreed that should the Quebec Harbour Commissioners decide that the
 " same shall be done, the said Simon Peters shall execute the said work at
 " the rates set forth in the said specification lettered B; and annexed to the
 " said Main Contract, but in the event of the said work being so performed
 " or executed by the said Simon Peters, neither he, the said Simon Peters,
 " nor the said Moore and Wright shall have any claim against each other
 40 " respectively by reason of the deduction caused by such modification in the
 " mode of constructing the said wall from the gross amount of the work by
 " them respectively undertaken.

6. The Quebec Harbour Commissioners exercised their option of replacing
 the wooden face and fine concrete by a stone face backed with coarse concrete

for its whole length. The Engineers used the power given them by the Contract to change the contract work to such an extent as, according to the contention of all of the contractors, to have nullified the Contract and to have entitled the Contractors to payment as upon a *quantum meruit*.

7. The contract works, as altered, were terminated at the end of October, 1881, and each of the contractors proceeded to make up his claim for work done and a joint claim was sent in to the Commissioners. These claims were based upon the contention that the contract had been avoided by reason of the extent of the changes made in the contract works by the engineers, and were made up on the principle that all the work done should be paid for according to schedule 10 prices in the contract, where applicable, and where no schedule price was provided, upon the fair value of the work done, entirely ignoring the bulk sum contract executed with the Commissioners.

8. These accounts were referred by the Commissioners to the Chief Engineers for a report and award. The award was unsatisfactory to the contractors, whereupon, by agreement between the Contractors and the Quebec Harbour Commissioners, the whole matter was referred to the Dominion Arbitrators for their decision. No deed of submission was executed between the parties. The award of the Dominion arbitrators being in excess of the amount allowed by the Engineers, the Quebec Harbour Commissioners sought to appeal to the Supreme 20 Court of Canada from the award. The Contractors raised the question of jurisdiction, whereupon the Harbour Commissioners refused to be bound by the award, which thereafter was treated as void by both parties.

Record, p. 636, l. 20. 9. On the 20th of December, 1883, Peters, Moore & Wright, instituted a suit against the Quebec Harbour Commissioners claiming payment of the sum of \$352,437.20. The Harbour Commissioners met this action by a plea to the effect that the Chief Engineers had not given the final and closing certificate, upon which, alone, the Contractors were entitled to be paid any balance coming to them. The Contractors, feeling the strength of this plea, withdrew their action and thereafter sought to obtain from the Chief Engineers a final certificate which 30 would prove satisfactory to them. For this purpose, after consultation at Portland between the Contractors and Mr. Woodford Pilkington, who had been Resident Engineer on the work during the time the contract works were being performed, they sent Mr. Pilkington to England with a statement to discuss the matter with the Chief Engineers, Messrs. Kinipple & Morris, in order to endeavor to have these gentlemen modify their views, as contained in their previous award, and grant a certificate in accordance with the contentions of the Contractors.

Record, p. 231, l. 20.

10. On the 4th of February, 1886, the Chief Engineers issued their final certificate, which was in the following terms :

Record, p. 8, l. 20.

“ We hereby certify that Messrs. Peters, Moore & Wright are entitled 40
 “ to a final payment under their contract of the sum of \$52011.00.” In a
 letter, enclosing this certificate to the Quebec Harbour Commissioners,

these gentlemen said: "We beg to offer some remarks on the certificate for the information of the Commissioners. Record, p. 534, l. 3.

"We have allowed payment for all works actually constructed, further, we have made no deductions on account of the "time penalty."

"We have deducted the amount of clerical error, also the sum for the removal or levelling of the sand on the Louise Embankment in accordance with your letter of the 14th November, 1885.

10 "The amount of certificate is based on the assumption that the Contractors have received on account of works the sum of \$645,799.00 as per statement forwarded to us.

"We have made no allowance for interest."

11. On the 19th August, 1886, Peters Moore & Wright again sued the Quebec Harbour Commissioners, seeking to have the Chief Engineers' Certificate set aside and claiming payment of the sum of \$184,241.26. Record, p. 642, l. 1.

12. This action was finally terminated on the 17th November, 1891, by judgment of the Supreme Court of Canada, which added to the certificate, a sum of \$35,457.50 making a total sum of \$87,468.71, with interest from the 4th of February, 1886, which it was adjudged the contractors were entitled to receive in final settlement of their claims. Record, p. 100, l. 1.

20 13. The contractors, being unable to agree upon the division between them of the sum awarded, entered into an agreement, which bears date the 29th of October, 1892, of which the following is the material part.

Record,
p. 10, l. 28.

"Whereas on the seventeenth day of November 1891, in a certain cause in which the said Simon Peters, Edward Moore and Augustus R. Wright were Plaintiffs and the Quebec Harbour Commissioners were Defendants, the Supreme Court of Canada rendered judgment in favour of the said Plaintiffs for the sum of eighty-seven thousand four hundred and sixty-eight dollars and seventy-one cents, with interest at the rate of six per cent from the fourth day of February eighteen hundred and eighty-six.

30 "And whereas the said Harbour Commissioners, having certain offsets against the said judgment, amounting to the sum of thirty thousand dollars and interest, paid one half to the said Simon Peters and the other half to the said Messrs. Moore & Wright pending the suit, have deducted the same from the amount of the said judgment.

"And whereas since the rendering of the said judgment the said Commissioners have agreed to pay certain orders drawn on the amount thereof, one in favour of the estate Samson for eight thousand dollars, another in favour of the Bank of Montreal for seven thousand dollars both for and on

“ account of the said Simon Peters and another in favour of Mr. Justice
 “ Bossé for one thousand eight hundred and seventy-one dollars, and fifty
 “ cents, the aggregate amount whereof, namely sixteen thousand eight hun-
 “ dred and seventy-one dollars and fifty cents, they have also deducted from
 “ the said judgment.

“ And whereas the said Commissioners have paid the balance of taxable
 “ costs by them due under the judgment, to wit the sum of eight hundred
 “ and forty-one dollars and forty-seven cents, and the balance remaining due
 “ thereunder has been established at the sum of sixty-eight thousand nine
 “ hundred and seventy-two dollars and ninety-five cents (\$68,972.95.) 10

“ And whereas the parties to this agreement being interested in the
 “ amount of the said judgment have not yet determined their respective
 “ shares in the amount thereof and in the expenses and liabilities connected
 “ with the contract and with the lawsuit in which such judgment was
 “ rendered.”

“ This agreement witnesses :

“ 1. The parties of the first and second part hereby consent and agree
 “ on receipt of the sum of sixty-eight thousand nine hundred and seventy-
 “ two dollars and ninety-five cents to join in a discharge to the Quebec
 “ Harbour Commissioners for the amount of the said judgment and costs. 20

“ 2. The said sum of sixty-eight thousand nine hundred and seventy-
 “ two dollars and ninety-five cents shall be paid by the said Harbour Com-
 “ missioners into the Union Bank of Canada to the credit of Simon Peters
 “ and Messrs. Moore & Wright jointly, to remain there at interest at four
 “ per cent as a special deposit until the respective shares of the parties to
 “ this agreement are finally established.

“ No cheque or cheques shall be drawn against such deposit or accepted
 “ by the bank, to which a copy of this agreement shall be communicated,
 “ unless such cheque or cheques bear the signatures of all the parties hereto,
 “ either personally or by attorney.” 30

14. On the 16th of October, 1893, the parties being unable to reach an agreement as to their respective interest in the money deposited, the late Simon Peters brought suit, alleging the foregoing contracts, stating that the Commissioners had exercised their option to substitute the stone face and coarse concrete for the wooden face and fine concrete to the dock and that he had wholly constructed the stone face at the cost of \$77,378,50 and that he had further done the work referred to in the accounts filed with the declaration, and he concluded as follows :

“ 1. That the account and statement herewith produced by the Plaintiff
 “ being the particulars in detail of his demand be declared to be a true and 40

“ faithful account and statement of all the works done and performed by
 “ him the Plaintiff under the contracts above alleged.

“ 2. That the Defendants Edward Moore and Augustus R. Wright be Record, p.
 “ jointly and severally adjudged and ordered, within such time as the Court 13, l. 14.
 “ shall name, to furnish the Plaintiff with a true and faithful account of all
 “ the work by them done and performed under the said contracts.

10 “ 3. That it be declared that immediately after the making and signing
 “ of the said agreement of the twenty-ninth of October, one thousand eight
 “ hundred and ninety-two (1892), and the making of the deposit in said
 “ Bank, that thereupon the Defendants’ Moore & Wright, became and were
 “ and still are indebted to the Plaintiff in the said sum or bonus of five
 “ thousand dollars (\$5,000.00), together with interest thereon from the date
 “ of the said deposit, for the causes aforesaid.

20 “ 4. That it be adjudged and declared what sum or sums of money the
 “ Plaintiff hath a right to be paid out of the said moneys deposited in the
 “ Union Bank of Canada and specially that it be adjudged and declared that
 “ the Plaintiff hath a right to be paid out of the said moneys so deposited
 “ the sum of thirty-eight thousand five hundred and thirty-two dollars and
 “ fifty-five cents, the whole as shewn in the said statement and account
 “ herewith produced.

30 “ 5. That in default of the Defendants Moore & Wright, within such
 “ delay as this Court shall appoint, to conform to the said agreement of the
 “ twenty-ninth day of October, eighteen hundred and ninety-two by signing
 “ a cheque on the said Bank in favor of the said Plaintiff for such sum as
 “ the Court shall name, that then and in that case the Plaintiff be authorized
 “ to draw out of the said Bank out of the money so deposited, the said sum
 “ of thirty-eight thousand five hundred and thirty-two dollars and fifty-five
 “ cents, with interest on such other sums as the Court shall name: and that
 “ the said Bank be ordered and adjudged to pay such sum to Plaintiff out
 “ of the said moneys so deposited under the agreement last mentioned, the
 “ whole with interest against the said Defendants Moore & Wright, jointly
 “ and severally, and costs of suit.

40 15. The Appellants pleaded, admitting the contract of the 2nd of May, 1877, Record,
 with the Quebec Harbour Commissioners and that of the 4th of May, 1877, p. 120.
 between the Contractors, and alleging that they, the Appellants, had performed all
 the work referred to in the contract with the Quebec Harbour Commissioners,
 except the timber and iron work (the pitching of outer slopes, and forming of
 roadway having been omitted by order of the Engineers) and the supplying of
 the stone and building of the masonry of the stone wall. They claimed to be
 entitled to all the monies payable by the Commissioners in respect of the works,
 save the moneys payable for the work done by the Plaintiff, and they denied their
 liability to account to the Plaintiff for the moneys received by them. They fur-

ther alleged that the Chief Engineers used the power conferred upon them by the terms of the contract with the Quebec Harbour Commissioners to alter and vary the contract works, and that, under the terms of the contract, the Chief Engineers had issued their final certificate, which final certificate, (save as to deductions for an alleged clerical error in dredging and for an amount charged by the Commissioners for levelling sand,) had been declared binding upon the contractors and the Commissioners by the judgment of the Supreme Court and that such certificate was binding upon the Plaintiff and the Defendants, and finally settled their rights, with respect to the sums payable to each, and the Defendants filed with their plea the detailed statement upon which the final certificate was based: they further alleged that the Plaintiff had performed work, which had been allowed by the engineers, to a value of \$242,733.65, while he had received \$267,452.11 making a sum of \$19,728.46, money belonging to the Defendants received by him after deducting the sum of \$5,000 payable to the Plaintiff by the Defendants as a bonus: that the Plaintiff's account was untrue, was made up upon a wrong principle and did not agree with the certificate of the engineers, and they pleaded in detail to the contested items of the account, admitting others.

The Appellants further alleged that it was stipulated by the contract that the incidental expenses unanticipated or unprovided for, should be borne *pro rata* to the value of the work, as established by the Schedule of prices, respectively executed by the contractors under the contract: that the Main Contract with the Commissioners was to be prepared at joint expense: that the contractors were bound to supply the engineers' offices, and to have contractors' offices upon the work. That the contractors were compelled to employ a competent engineer and that the commissioners had charged to the contractors as their share of the expenses of rent and taxes \$1799.56, which was deducted from the amount of the final certificate, and a part of which, proportioned to the value of the work done by him, the Plaintiff was bound to bear. That the Plaintiff was indebted for his proportion of expenses for engineering, engineers' offices, heating, boatmen, etc., amounting in the whole to \$53,485.65. That he was further indebted in the sum of \$8,427.38, amount of an account for labour. That by a bond, duly executed, the Plaintiff had agreed to repay any sum which it should be ascertained he had received in excess of what was due to him. The plea concludes that the Plaintiff be held to have received all that was due to him, and the whole sum on deposit be adjudged to the Defendants.

Record,
p. 162.

16. By a special answer, the Plaintiff denied the accuracy of the detail of the final certificate, contending that such detail had been known to the Engineer Morris alone, and not to the Engineer Kinipple. That the certificate was incompatible with the progress estimates and contained charges for work not done by the Defendants. The special answer further attacked in detail, certain of the items of the details of the final certificate and of the Defendants' accounts.

Record,
p. 232.

17. The Defendants replied specially with respect to the items of the final certificate and of the accounts attacked and pleaded that the progress estimates

upon which the Plaintiff relied were binding, under the terms of the contract, neither on the Commissioners nor the Contractors but were subject to be dealt with by the Engineers as they saw fit when making up their final certificate; that in fact, they had been dealt with by the final certificate which was based upon an entirely different principle than that upon which the progress estimates were made up, and that the Chief Engineer having, under the contract for the execution of the works, full power to alter the works and to determine the payment to be made for them and for the additional and extra work, did so determine the payment and that, as the amounts to be distributed between the Plaintiff and Defendants, were the amounts certified by the Chief Engineer with the additions thereto made by the judgment of the Supreme Court of Canada, the detail of the said certificate was the only true means by which the division of the amount, between the parties, could be ascertained. } }

18. After trial, judgment was rendered by the Superior Court at Quebec on the 30th of June, 1896, of which the material parts, are as follows:

20 " Considérant que le *certificat final détaillé* produit en cette cause par les Défendeurs comme leur exhibit 1A, et signé par Kinniple, l'un des ingénieurs, en mil huit cent quatre-vingt-treize, n'offre aucune garantie d'exactitude, parce qu'il a été préparé par Moore, l'un des Défendeurs, ou sous ses ordres, et parce que Kinniple n'était pas capable de vérifier les détails du dit certificat, et de juger de leur véracité par ses connaissances personnelles ; Record, p. 55, l. 39. }

30 " Considérant que les *estimés progressifs* (*progress estimates*) et les *certificats* des ingénieurs ayant rapport aux dits *estimés* font une preuve légale des travaux exécutés, au fur et à mesure que l'entreprise progressait, mais ne constituent malheureusement qu'une preuve incomplète, parce qu'ils n'embrassent pas tous les travaux exécutés, ni toutes les sommes payées aux contracteurs par les Commissaires, ni les réclamations personnelles des parties, l'une contre l'autre, dans lesquelles les Commissaires n'avaient aucun intérêt ; }

" Considérant que les autres pièces des parties formant leur *preuve documentaire*, et se composant de comptes, de plans, de calculs, de lettres et d'autres documents, ne font pas non plus une preuve complète et satisfaisante des réclamations respectives des parties ;

40 " Considérant que pour les raisons ci-dessus énoncées, la preuve des parties ne constate pas suffisamment et avec certitude: 1o quelle portion dans la totalité des travaux, a été exécutée par chaque partie; 2o quelle portion des dits travaux a été approuvée, reconnue, certifiée par les ingénieurs et payée par les Commissaires; 3o. quelle part doit être assignée à chaque partie dans la somme déposée proportionnellement à ses travaux ; Record, p. 651. l. 17.

" Considérant qu'un tel état de chose est dû à la *faute commune* des deux parties qui paraissent avoir négligé de tenir des livres réguliers et

“ communs contenant le détail de tous les travaux exécutés par chacune
 “ d’elles, des prix de ces travaux et des sommes reçues par chacune d’elles
 “ pour chacun des dits travaux ;

“ Considérant qu’à raison de cette faute commune les parties en cette
 “ cause se trouvent dans la même situation que des associés qui n’auraient
 “ pas stipulé quelle part appartiendrait à chacun dans les profits d’une
 “ exploitation faite conjointement, ou qui ayant stipulé un partage propor-
 “ tionnel à la mise de chacun seraient incapables d’établir le chiffre de leurs
 “ mises respectives ;

“ Considérant en conséquence que cette Cour a le droit de leur appli- 10
 “ quer l’article dix-huit cent quarante-huit (1848) du Code Civil, et de parta-
 “ ger également entre elles la somme déposée en banque ;

“ Considérant qu’un tel partage, par égales parts, est le seul juste et
 “ juridique que la preuve et la loi permettent, et qu’à raison de leur dite
 “ faute commune, il est également équitable que chaque partie paie ses frais ;

“ Maintient l’action en cette cause, et adjuge :

“ 1o Que les Demandeurs—par reprise d’instance ont droit d’être payés
 “ sur les argents déposés dans la *Union Bank of Canada* de la somme de
 “ trente-quatre mille quatre cent quatre-vingt-six piastres et quarante-sept
 “ cents et demi, étant la moitié du dit dépôt, avec les intérêts accrus sur 20
 “ icelle moitié, et que l’autre moitié devra être payée aux Défendeurs avec
 “ les intérêts accrus sur icelle ;

“ 2o Que les Défendeurs seront tenus sous quinze jours de la significa-
 “ tion du présent jugement de signer en faveur des Demandeurs par reprise
 “ d’instance un chèque sur la dite Banque pour la susdite somme et intérêts ;

“ 3o Que dans le cas de défaut de la part des Défendeurs de signer le
 “ dit chèque les Demandeurs par reprise d’instance sont autorisés à retirer,
 “ la dite somme de la dite Banque avec intérêts comme susdit, et il est
 “ ordonné à la dite Banque de payer alors la dite somme aux Demandeurs
 “ par reprise d’instance avec intérêt sans préjudice au droit de la dite Banque 30
 “ de déduire d’icelle les argents qu’elle a pu payer depuis aux dits Deman-
 “ deurs ;

“ 4o Que le partage ainsi fait de la dite somme entre les parties tiendra
 “ lieu de paiement vis-à-vis l’une de l’autre de toutes les réclamations par
 “ elles produites en cette cause l’une contre l’autre—et que chacune des
 “ parties paiera ses frais dans la présente instance, et la Cour ordonne que
 “ les pièces des Défendeurs mises sous clef, par ordre, soient remises au
 “ dossier.”

19. On Appeal, by the present Appellants, the judgment of the Superior
 Court was varied and a judgment based upon an attempt to investigate the 40

accounts between the parties was rendered. The material part of the judgment is as follows :

“ Considering that in the judgment of the Superior Court, appealed from, based upon an equal division between the contesting parties, of the balance paid by the Harbour Commissioners and deposited to the joint credit of said parties as aforesaid, there is error. Doth maintain the present appeal and doth set aside and annul said judgment and proceeding to render the judgment which said Superior Court should have rendered ;

10 “ Considering that good and sufficient proof has been adduced or admissions made to establish that the original Plaintiff Simon Peters, represented by the present Respondents, was entitled, as between himself and the Defendants upon the following named items of his account sued upon, to the amounts hereafter set forth, to wit :

	“ Upon the item	No. 1	the sum of.....	\$	36,955 44
	“	“	No. 2 “		328 61
	“	“	No. 3 “		48,465 73
	“	“	No. 4 “		6,838 44
	“	“	No. 5 “		2,895 14
	“	“	No. 7 “		5,474 88
20	“	“	No. 8 “		77,378 50
	“	“	No. 9 to 23 inclusive admitted...		98,817 30
	“	“	No. 25 the sum of		1,692 70
	“	“	No. 26 “		1,038 00
	“	“	No. 29 “		32 64
	“	“	No. 30 “		42
	“	“	No. 40 “		5,000 00
	“	“	No. 42 “		14 11
	“	“	No. 46 “		14 70
	“	“	No. 47 “		26 63
30	“	“	No. 48 “		7 11
	“	“	No. 49 “		113 85

“ amounting in all to the sum of..... \$ 285,094 20

“ two hundred and eighty-five thousand and ninety-four dollars and twenty cents.

40 “ From which is to be deducted the sum of two hundred and thirty-seven thousand four hundred and fifty-one dollars and ninety-six cents paid in cash to said Simon Peters prior to the fourth day of February 1886, and the further sum of \$490.48 admitted by said Simon Peters as his proportion of a sum of \$1,200, paid by Appellants to Hon. J. G. Bossé, prior to said last named date, the sum of \$2,500, paid on 9th March 1887, \$12,500, paid on 13th September 1887, \$15,000 paid on 29th October 1892, \$764.95 admitted by said Peters as his proportion of a sum of

“ \$1,870.50 paid by Appellants to said Hon. J. G. Bossé, \$1,634.94 admitted
 “ by said Peters as his proportion of a sum of \$4,000 paid by Appellants to
 “ W. Cook and \$599.85 being Plaintiff’s proportion of a sum of \$1,799.56
 “ deducted by said Harbour Commissioners for rent and taxes admitted by
 “ said parties, the last three items to be credited and deducted as of the 29th
 “ October 1892, amounting in all to two hundred and seventy thousand,
 “ nine hundred and forty-two dollars and eighteen cents \$270,942.18 leaving
 “ a balance of \$14,152.02 to which is to be added interest at the rate of six
 “ per cent from the fourth day of February 1886 until the 9th day of March
 “ 1887 upon the sum of \$41,975.42 and at the same rate upon the sum of 10
 “ \$42,235.44 from the 9th March 1887, until the 13th September 1887 and
 “ at the same rate upon the sum of \$31,030.27 from the 13th September
 “ 1887 until 25th July 1892 and at four per cent interest per annum for a
 “ term of three months on the sum of \$40,090.23 amounting said several
 “ items of interest to the sum of \$13,515.71 making a total of \$27,667.73 as
 “ the amount for which said Plaintiffs, *par reprise d’instance*, have established
 “ their claim in and to the funds deposited to the joint account of said
 “ parties hereto as hereinbefore set forth ;

“ Considering that the remaining items included in Plaintiff’s action are
 “ unproved or prescribed by limitation of time; 20

“ Considering that the items of account urged by said Defendants in
 “ offset and deduction of Plaintiff’s said claim are either unproved or pres-
 “ cribed by limitation of time and can only be allowed to the extent
 “ admitted by said Plaintiffs as hereinbefore set forth ;

“ Doth declare the said Respondents entitled to the said sum of
 “ \$27,667.73 out of the deposit at the said Union Bank of Canada with
 “ interest thereon at the rate of four per cent per annum from the 29th of
 “ October 1892 and the said Appellants are adjudged and condemned within
 “ 15 days from the service upon them of the present judgment to join said
 “ Respondents in making and signing a cheque upon the said Union Bank 30
 “ of Canada for the said sum of \$27,667.73 and interest as aforesaid and in
 “ default of said Appellants signing said cheque, the said Respondents are
 “ hereby authorized to withdraw the said sum and interest from said Bank,
 “ and the said Bank *mise en cause* is ordered and authorized to pay said
 “ sum and interests to said Respondents, and further the said Appellants
 “ are condemned to pay to Respondents their costs of suit in the Superior
 “ Court, and the said Respondents are condemned to pay to Appellants the
 “ costs of the present appeal.

20. This judgment takes no account of the claims of the Appellants against
 the Respondents, upon one of two principles, viz: that such claims were insuf- 40
 ficiently proved or that they were prescribed.

21. A comparison of the amount allowed to the Respondents by this judg-
 ment with the amounts claimed at different times, by the late Simon Peters as

established by the record, will show that a sum greatly in excess of any claim ever put forward by Peters, prior to the institution of the present suit, has been awarded to him.

22. On the 20th of February, 1884, the late Simon Peters wrote to Colonel Moore, one of the Appellants, as follows : Record, p. 614, l. 10.

10 “ \$23,442.84 is the balance due me on the award of arbitrators. There
 “ is not much margin for a rebate on that small amount. You must bear in
 “ mind that I am very little better off than by Kinipple and Morris’ award.
 “ I have been kept out of the settlement fighting your battle. Therefore,
 “ don’t ask me to make a further sacrifice that I really cannot afford.”

The award of the Dominion Arbitrators, which is referred to in this letter, was very much more favorable to the contractors than the judgment of the Supreme Court ultimately was. The amount awarded bore interest from February 1886 only. By the Plaintiff’s accounts, he admits receiving, Record, p. 588, l. 20.

On the 9th of March, 1887	\$ 2,500 00		
On the 13th of September, 1887.....	12,500 00		
On the 29th of October, 1892.....	15,000 00		

Record, p. 103, items 32, 34, 37.

and in addition he gives credit for the following sums for legal expenses,

	490 48		
	764 95		
	1,634 94		
Total.....	\$32,890 37		

Record, p. 103, items 28, 38, and 39 A.

On the 9th of March, 1887, Simon Peters handed a detailed statement of the amount claimed by him, showing a total sum of \$38,647.44 from which is to be deducted a sum of \$5,000 received by Peters on the 2nd of February, 1880 and not accounted for in the above statement, showing a true balance, then claimed, of \$33,647.44, since which, by the account already referred to, the Plaintiff admits receipt of \$27,500.00. In this statement, no credit is given for even the proportion of legal expenses admitted by the action. On the 8th of January, 1891, after the decision of the Supreme Court, Simon Peters sent to the Appellants another statement showing a total claim at that date of \$36,410.00; from this amount is to be deducted the sum of \$30,000, for which credit is given and the proportion of legal expenses admitted. Again, on the 4th of August, 1887, Peters wrote to the Quebec Harbour Commissioners praying for an advance on account of the balance claimed to be due. He there states. “ The sum coming to me according to the certificate of Messrs. Kinipple & Morris, amounts to within a trifle of \$34,000. The amount to satisfy Mr. Samson will still leave a considerable balance in your hands. I take this opportunity to state that I take no part in the action pending against the Commission, as I am individually satisfied with the Engineer’s certificate.” Record, p. 612.

30 Record, p. 609.

40 Record, p. 587, l. 10.

23. The difficulty, which both Courts have felt, has been the subject of the details of the final certificate. The Plaintiff sets out in his declaration, a detailed statement signed by Mr. Kinipple on the 5th of January 1887. This statement begins with the contract price of \$529,296.31 and furnishes in detail the additional works only. It brings out the balance of \$52,011.21, for which the final certificate was given. To this sum was added \$31,050, wrongfully deducted for a supposed clerical error in the quantity of dredging stipulated to be done by the contract, and a further sum of \$4,407.50 overcharge made by the Quebec Harbour Commissioners in respect of the removal of sand charged to have been left upon the contract works by the contractors. Both these items, added by the judgment of the Supreme Court, were in respect of the works done by the Appellants. On the 15th of May, 1893, Mr. Kinipple sent to Col. Moore, one of the Appellants, a further detail of the allowances covered and deductions made by the final certificate, which differs from the previous one referred to, in that it contains the detail of the works allowed and included in the bulk sum of the contract. The Appellants relied in both Courts and rely in this Court, upon this certificate as being the only safe and true basis for the division of the moneys in dispute. Both courts below refused to consider this second certificate as binding upon the Respondents, on the ground that it was certified by Kinniple, who it was claimed had had comparatively little to do with the contract works, and upon the further ground that it had been prepared by Col. Moore and sent over to Kinipple for his signature. It is true, that the certificate was sent by Col. Moore to Mr. Kinipple and certified by him, but it is not true that it was prepared by Col. Moore or that it was certified by Kinipple without examination and verification as to its accuracy. The testimony upon this point is that of Col. Moore himself and of Mr. Kinipple. Col. Moore says :

Record, p.
285, l. 10.

“ The details of that certificate were prepared at Quebec, and at Portland, during the time from the close of the contract in 1881 until the summer of 1885. That document is the result of these details and was prepared at Portland by myself and our engineer, the late Mr. Brown. It was made up by details furnished by Mr. Brown, Mr. Woodford Pilkington, the resident engineer, and put in shape and sent to London in accordance with the terms of the contract.

Record, p.
286, l. 39.

“ I am unable to state the exact dates, because we sent a number of different statements from time to time, but it was between 1885, I think was the year we first commenced sending statements, and asking for our final certificate up to the time which he returned the latter document 1 A, which is the last document that we received from him in reference to that.

Record, p. of April, 1886, on the subject of the final certificate, say :
231, l. 20.

Messrs. Kinipple & Morris writing to the Appellants, under date of 19th

“ Herewith, as desired, we send you copy of final certificate. We offer the following remarks on the same. We carefully read over the letter and statement forwarded to us through Mr. Pilkington and have tried, as far as possible, to divide the items, but we have found (except in a few

“ items) it is impossible at this distance of time, to go into all details of
 “ your contract, and had we attempted it, we fear we should have got into
 “ a hopeless confusion. Therefore, as you will expect, the final certificate
 “ is based on the result we came to at the time of the arbitration, when
 “ everything was fully before us and fresh in our minds, and when all diffe-
 “ rences were fully gone into at the time and settled.”

Mr. Kinipple was examined on Commission and his testimony fully confirms
 the accuracy of the detail of the certificate signed by him in 1893. He says :

10 “ *6th Interrogatory* :—Please take communication of the statement Record, p.
 “ annexed hereto, and marked Defendants’ Exhibit No. 1 A, and state whe- 241, l. 35.
 “ ther such statement is a true, full and detailed statement of the final cer-
 “ tificate issued by you covering all works done by the contractors, and
 “ and allowed by Kinipple & Morris, both under the contract and for extra
 “ work ?

“ *Answer*—Exhibit No. 1 A, is a full and detailed statement of the
 “ final certificate issued by my late firm and covers the whole of the work
 “ executed by the contractors and allowed by Kinipple & Morris both on
 “ the contract and for extra work.

20 “ *7th Interrogatory* :—Please state shortly the difference between the
 “ two details of the final certificate ?

“ *Answer*—There is no difference in the total. One certificate gives
 “ the total in a lump sum of \$529,296.31 under the contract and the
 “ other does not. Exhibit 1, starts with the original contract sum of \$529,-
 “ 296.31. Exhibit 1 A, sets out the details of that amount, the remaining
 “ items are alike in both certificates.

30 “ The whole of the details in connection with the granting of the final Record, p.
 “ certificate were prepared by my late partner Mr. Morris, who died about 242, l. 25.
 “ 8 months after that certificate was granted. The details were discussed
 “ and settled by myself and my partner on many occasions prior to his death.
 “ I therefore say that at the time the detailed certificate was given I was in
 “ a position to give same.

“ *11th Cross-Interrogatory* :—Would you refer to the entries from l. 38.
 “ which the details mentioned, Defendants’ Exhibit No. 1, are taken and
 “ state whether it is not true that the same were furnished by the Defen-
 “ dants or one of them or some party on their behalf ?

“ *Answer*—I say that I am unable at present to refer to the entries
 “ from which the details mentioned in Defendants’ Exhibit No. 1, were
 “ taken but I say that it is not true that the same were furnished by the
 “ Defendants or one of them or some party on their behalf.

40 “ *12th Cross-Interrogatory* :—Who made the original entries of the

“ details contained in Defendants’ Exhibit No. 1, and at what times were
 “ these original entries made and by whom and where were the same made?

“ *Answer*—I cannot say definitely who were the persons who made the
 “ original entries of the said details but they were made by Mr. Morris, Mr.
 “ Pilkington, myself and others engaged in connection with the works and
 “ acting under the directions of my firm and they were made from time to
 “ time as the progress of the work required and they were made partly on
 “ the works and partly at the Head Office in London.

“ *19th Cross-Interrogatory*:—Is it not true that the original final certi- 10
 “ ficate dated on the 4th February 1886, and signed by the firm of Kinipple
 “ & Morris, was signed by your late partner Mr. Morris and that the same
 “ did not contain any details and is it not true that the said firm of Kinipple
 “ & Morris never at any time gave the Quebec Harbour Commissioners or
 “ the Plaintiff any details whatever of the said final certificate although the
 “ Quebec Harbour Commissioners wrote and asked the said firm of Kinipple
 “ & Morris, for said details but that, subsequently, you received from Colonel
 “ Moore, or one of the Defendants’ the details of the additional works which
 “ appear in the Defendants’ Exhibit No. 1, and that availing yourself of
 “ these details your prepared said Defendants’ Exhibit No. 1, and sent the 20
 “ same to Colonel Moore as appears by your letter to him of the 5th January
 “ 1887, a copy of which is contained in Plaintiff’s Exhibit No. 41?

“ *Answer*—It is true that the original final certificate dated 4th
 “ February, 1886, and signed by the firm of Kinipple & Morris, was signed
 “ by my late partner Mr. Morris and that the same did not contain any
 “ details. The said firm of Kinipple & Morris never at any time gave the
 “ Quebec Harbour Commissioners or save as hereinafter mentioned the
 “ Plaintiff any details whatever of the said final certificate. I am not aware
 “ that the Quebec Harbour Commissioners ever wrote and asked my firm
 “ for said details. My firm subsequent to the 4th February, 1886, at the 30
 “ request of Col. Moore and or his firm supplied to him or them details of
 “ the final certificate which said details are represented by the Defendants’
 “ Exhibit No. 1. Neither I nor my firm subsequently or at any time received
 “ from Col. Moore or one of the Defendants the details of the additional
 “ work which appears in the Defendants’ Exhibit No. 1, neither I nor my
 “ firm therefore could have availed ourselves of any such details in preparing
 “ the Exhibit No. 1. It would appear from the said letter of the 5th January,
 “ 1887, copy of which is contained in the Plaintiff’s Exhibit No. 41, that I
 “ did send the details embodied in Defendants’ Exhibit No. 1, to Col. Moore.

“ *20th Cross-Interrogatory*:—Is it not also true that the details of
 “ Defendants’ Exhibit No. 1A were sent to you by Colonel Moore or one of 40
 “ the Defendants and that you signed the same Kinipple & Jaffrey and
 “ subsequently sent the same to Colonel Moore or one of the Defendants
 “ without the knowledge or consent of the Plaintiff?

10 “ *Answer*—It is true that the details of Defendants’ Exhibit No. 1A
 “ were sent to me by Col. Moore or one of the Defendants in or about the
 “ months of April or May, 1893, and that I signed the same Kinipple &
 “ Jaffrey and subsequently sent the same to Col. Moore, or one of the
 “ Defendants without the knowledge or consent of the Plaintiff. Before
 “ signing the said copy Exhibit No. 1A, I satisfied myself that the details
 “ on pages 1, 2 and 3 of Exhibit No. 1A, correctly represented the \$529,-
 “ 296.31, inserted at the top of the Defendants’ Exhibit No. 1. The details
 “ of pages 1, 2 and 3 of Exhibit 1A, were the figures in the original works
 “ contract, and further I satisfied myself that the remainder of the Exhibit
 “ No. 1A, was a true copy of my firm’s said certificate being Defendants’
 “ Exhibit No. 1.

“ *29th Cross-Interrogatory* :—Is it not true that the Defendants’ Exhi- Record, p.
 “ bit No. 1A is incompatible with and contradictory to all the progress esti- 247, l. 10.
 “ mates made of the work in question ?

“ *Answer*—I say that as all the progress estimates were only approxi-
 “ mate statements of work done the exhibit No. 1 A, may possibly appear
 “ incompatible and contradictory with such estimates but I do not consider
 “ that that is a matter of the slightest importance.

20 “ *30th Cross-Interrogatory* :—Is it not true that said Defendants’ Exhibit
 “ No. 1 A is incompatible with every certificate and report that you know
 “ of that was given by your firm in relation to the said works ?

“ *Answer*—I say that it is not true that the said Defendants’ Exhibit
 “ No. 1 A is incompatible with the certificate and report given by my firm
 “ in relation to the said works. On the contrary I say that Exhibit No. 1
 “ A, is compatible in every respect with the certificate being the Defen-
 “ dants’ Exhibit No. 1.

30 “ *43rd Cross-Interrogatory* :—Is it not true that the said details of the Record, p.
 “ said progress certificates are incompatible with and contradictory to the 253, l. 4.
 “ details contained in Defendants’ Exhibit No. 1 A, inasmuch as the said
 “ progress Estimates do not allow for the Timber face and fine or 4 × 1 con-
 “ crete mentioned in Defendants’ Exhibit No. 1, which work was not done,
 “ but on the contrary do allow for the work substituted in lieu of the same
 “ and which was done ?

“ *Answer*—I say that on the facts stated the progress estimates may on
 “ their face appear incompatible with and contradictory to the details con-
 “ tained in Defendants’ Exhibit No. 1 A, but I say that such incompatibility
 “ or contradiction is immaterial inasmuch as the Exhibit No. 1A, superceded
 “ all the progress estimates.

40 “ *46th Cross-Interrogatory* :—Is it not true that the Defendants’ Exhi- Record, p.
 “ bit No. 1 A, is incompatible with the details given in the following Exhi- 253, l. 44.
 “ bits of the Plaintiff to wit Exhibits Nos. 22, 24, 20, 28, 29 and 32 ?

“ *Answer*—I say that the details given in the Exhibits Nos. 22, 24, 20, 28, 29, 32 may or may not be incompatible with the Defendants’ Exhibit No. 1 A, but I say that the Defendants’ Exhibit No. 1 A, supercedes the other Exhibits referred to in the said Cross-Interrogatory.

Record, p.
259, l. 44.

“ *80th Cross-Interrogatory* :—Is it not true also that there is an error in item No. 1A of the said Exhibit which allows for wood and iron work the sum of \$43,389 whereas the true amount allowable as per bills of quantities was \$44,877 making a difference of \$1,458 ?

“ *Answer*—I say that in the final certificate all details were adjusted and that certificate is absolutely correct and I do not believe that there is an error in item No. 1 A, as in the said Cross-Interrogatory suggested.

“ *81st Cross-Interrogatory* :—Is it not a fact that there is error in the sixth item of the said Exhibit No. 1 A, which allows \$63,893.25 for wood and iron work whereas the true price as per bills of quantities was \$67,344 making a difference of \$3,451.50 ?

“ *Answer*—I say that in the final certificate all details were adjusted and that there is no error in the 6th item of the said Exhibit 1 A.

“ *82nd Cross-Interrogatory* :—Look at item 11 and state whether is not error in the said item which allows \$4,184.21 instead of the sum of as per bills of quantities which amount to \$6,838.44 namely error to the extent of \$2,654.23 ?

“ *Answer*—I say that in the final certificate all details were adjusted and that certificate is absolutely correct. I do not believe that there is an error in item 11 of said Exhibit No. 1 A.

“ *83rd Cross-Interrogatory* :—Look at item 12 of the said Exhibit and state whether there is not an error in the same to the extent of \$190.12 the correct amount allowable being \$2,895.14 instead of \$2,705 02 ?

“ *Answer*—I say that in the final certificate all details were adjusted and that certificate is absolutely correct. I do not believe that there is an error in item 12 of said Exhibit No. 1A. 30

“ *84th Cross-Interrogatory* :—Is there not also error in the 19th item of the said Exhibit to the extent of \$216 the amount allowable as per bills of quantities being \$6,644 instead of \$6,428 as stated in said item ?

“ *Answer*—I say that in the final certificate all details were adjusted and that certificate is absolutely correct. I do not believe that there is an error in item 19 of said Exhibit No. 1 A.

“ *85th Cross-Interrogatory* :—Will you swear that Defendants’ Exhibit No. 1A is true and correct in all respects ?

" *Answer*—I swear to the best of my information, knowledge and belief that the Defendants' Exhibit No. 1 A is true and correct in all respects.

" *86th Cross-Interrogatory* :—Is it not true that the work actually done and performed by the contractors Peters, Moore & Wright was all taken into consideration allowed for by the engineers, and all work not done by the contractors deducted as per contract.

" *Answer*—I say that on the final adjustment everything that had been done and everything that had not been done was taken into consideration and dealt with.

10 24. The Appellants by their plea to the action admitted the following items Record, of the Plaintiff's account, viz: 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, p. 101. 23, 26, 42, 49. These items, up to and including the 26th, correspond with the detail of the certificate and represent the sum allowed to the Plaintiff for the work done by him. Items 1, 3, 7 and 8, raise the most difficult question involved in the case. They are as follows:

{	" Bill No. 1, as per details annexed.....	\$36,955	44
	" Bill No. 4, as per details annexed.....	48,465	73
	" Bill No. 7, 4 cribs of 40 feet each as per Bill No. 1, at \$1368.72.	5,474	88
	" No. 8, stone wall as per details annexed.....	77,378	50

20 have been allowed by the Court of Queen's Bench in full.

25. The contract between Peters, Moore & Wright, and the Quebec Harbour Commissioners provided " that the Harbour Commissioners shall have a right to substitute a stone facing with 8 to one Portland Cement concrete to the quay walls, in lieu of fine Portland Cement and timber face, for the sum of \$18,393.58, for the whole length of the wall to be considered as extra work and paid for as such." The Appellants interpret this contract to mean that the joint contractors who had agreed to do work for a bulk sum covenanted to replace a part of the work contracted for, viz: the fine concrete and timber face by coarse concrete and a stone face, for an additional sum of \$18,393.58. In 30 determining the sums applicable to the work as changed, that is, to the coarse concrete and stone face, the only moneys which can be applied for the purpose are the amounts payable under the contract for the fine concrete and timber face, together with the extra sum. All the other works provided for in the contract were done under the schedules of prices and quantities in detail. It is, therefore, easy to ascertain the exact sum provided in the original bills of quantities applicable to the change in the work. This has been done by the Chief Engineer in the detail of the certificate Defendants' exhibit, annexed to the Commission, 1A. It also renders it comparatively easy to determine the sums payable to the Plaintiffs and Defendants respectively in respect of the substituted 40 work viz: the Plaintiff is entitled to have the cost or price of all the timber and iron work which should have gone into the works as originally contracted for and which are to be found in bills 1 and 4 of the specification or blue book. The Appellants proceed upon the principle of allowing to the Respondents all

Moore & W.
P. 294 l. 40 et seq.
A. H. Peters & W.
P. 368-70 l. 3.
H. J. Peters & W.
P. 327-8
P. 177 et seq.
" 197
" 201
" 205
" 206
" 209
" 210
" 212
" 213
" 215
" 216
" 217-8

the wood and iron in bills 1 and 4 as well that provided for the work constructed as that replaced by the coarse concrete and stone face. Also the sum of \$21,940.61, composed of the extra sum of \$18,393.58 together with $2\frac{3}{4}$ cents per cubic foot the cost of rough boucharding as provided by the contract. The Appellants are further prepared to allow the Respondents to take, so much of the price of the fine concrete stipulated by the original contract, the place of which has been filled in the works by the stone face. This item would amount to a sum of \$11,148.75. The late Simon Peters in lieu of adhering to the terms of the contract and claiming payment in accordance with the allowances made by the engineers based upon the sums stipulated in the contract with the Commissioners, has as against the Appellants, arbitrarily claimed the sum which he contends the stone wall cost him viz \$77,378.50. The Appellants on the other hand, contend that such sum as the engineers allowed, either by deductions from the bulk contract sum or expressly as additional work can alone be claimed by Respondents. This view is distinctly asquiesced in by the Respondents themselves, in their factum in the Court of Queen's Bench, wherein they say:

Record, p.
716, l. 25.

“ Quant à ce que M. Peters réclamait comme sa part dans ce qui provient de l'exécution du contrat en question, il est bon de noter que, comme chacun des entrepreneurs devait se contenter de ce qui était payé pour sa part des travaux, et n'avait aucun recours contre l'autre pour ce que les ingénieurs des Commissaires refusaient de certifier, il s'en suit que chacune des parties a droit à tout ce qui a été payé pour les ouvrages exécutés par elles, et n'a droit à rien pour les ouvrages qu'elle a exécutés, mais que les ingénieurs n'ont pas certifiés. Si donc, sur un ouvrage compris dans le lot d'une des parties, les Commissaires ont payé pour une quantité plus grande que celle exécutée, tant mieux pour elle. Si, au contraire, les Commissaires ont payé pour une quantité moindre que celle exécutée, tant pis pour cette partie. Par exemple, M. Peters aurait dû recevoir au-delà de \$82,000 pour le parement en pierre substitué au parement en bois et au béton fin, mais les ingénieurs n'ont certifié et les Commissaires n'ont payé pour ce mur que \$77,378.50; M. Peters doit se contenter de cette somme. D'un autre côté, les Commissaires ont payé pour du draguage \$34,472 de trop; les appelants doivent avoir le bénéfice de cette erreur, parce que, encore une fois, chacune des parties doit avoir ce qu'aurait eu un entrepreneur qui seul aurait entrepris tous les ouvrages compris dans sa partie.

“ Il est inutile de discuter ce point, car les deux parties sont d'accord là-dessus. Dans leurs plaidoyers, les appelants eux-mêmes disent que chaque partie doit recevoir ce qui a été payé pour sa part des ouvrages entrepris en commun, et rien de plus. La seule question que la cour ait à examiner est donc de savoir ce qui a été payé pour des ouvrages compris dans la partie attribuée à M. Peters, et ce qui a été payé pour des ouvrages compris dans le lot des appelants.

26. Notwithstanding this distinct admission, the Court of Queen's Bench has allowed to the Respondents the amount which it finds the wall actually cost, without taking into account the sum allowed by the Engineers.

The result of the account in respect of these items is as follows:

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PLAINTIFFS' CLAIM.		DEFENDANTS' CONTENTION.	
1. Bill 1.....	\$ 36955 44	Bill 1.....	\$ 43389 00
3. Bill 4.....	48465 73	Bill 4.....	68893 25
7. 4 cribs at \$1368.72.....	5474 88	Extra for wood and iron in 4 extra cribs.....	6428 00
8. Stone Wall.....	77378 50	Stone wall as per contract in- cluding price for rough bou- charding.....	21940 61
		Add allowance for proportion of fine concrete the place of which was taken by the stone wall.....	11148 75
Total.....	\$168294 55	Total.....	\$18799 61

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By the bills of quantities ("8-1 Portland cement coarse concrete to wall and counterforts from 4 ft. above low water to coping level behind the fine concrete in the Tidal Harbour" and "8 to 1 Portland cement coarse or rubble concrete to wall and counterforts behind the face concrete from 3 feet above low water in the Wet Dock") the contractors were allowed 10365 cubic yards of coarse concrete at \$4.75 per cubic yard, and fine concrete amounting to 4365 cubic yards in rear of the timber face, from four feet above low water to coping level for the superstructure of the 27 crib blocks in Bill No. 1 and the 4 extra crib blocks, all in the Tidal Basin, and in the 55 crib blocks of the Wet Dock Wall, from 3 feet above low water to coping level. The Engineers in dealing with the coarse concrete of the superstructure in their final certificate have deducted the full quantity and value of the 10,365 cubic yards, as allowed in the original bills of quantities for the rear of the timber face in the item of \$116,104.32, as this part of the work was not done, under the amended plan for the masonry face, in the manner called for by the original contract drawing.

27. They have in their final certificate, Defendant's Exhibit 1, items 1, 30, 31 and 32, and in Defendant's Exhibit 1 A in Items 22, 49, 50 and 51, allowed to the contractors under the amended plan for the masonry face, as extra work, 13,545 cubic yards for the coarse concrete backing to the Masonry Face of the superstructure of the Tidal Basin and Wet Dock Walls, from 4 feet above low water to coping level. They have also allowed in accordance with the terms of the contract, the 4365 cubic yards of the fine concrete, which was, under the original contract drawing, to have been placed in rear of the Timber Face. The fine concrete in the original Bills of Quantities for the Wet Dock Wall was computed from 3 feet above low water. "Behind the front plankings of the South Tidal Harbour Walls and the front pilings of the face of the South Wet Dock Wall, there is to be a facing of Portland cement fine concrete from 4 feet and 3 feet above low water mark respectively, to copings etc," while the masonry face was only built from 4 feet above low water: the Engineers in dealing with

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the 4365 cubic yards of fine concrete have, in their final certificate, allowed to the contractors the value of 3994 cubic yards of the 4365 cubic yards allowed in the original Bills of Quantities, which, under the terms of the clause in the written contract, went in lieu of the masonry face and coarse concrete backing. The Engineers have, in their certificate, deducted from the 4365 cubic yards., (see Record, p. 237, items 2, 7, & 21, items 2, 7 and ~~21~~, Defendants's Exhibit 1 A) 371 cubic yards, that being the portion of the 4365 cubic yards that remained, or was required under the amended plan, to bring the substructure of the Wet Dock Wall up to the same level with the substructure of the Tidal Basin Wall, as required by the order of the Engineer by letter

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“ Quebec, 22nd June, 1879.

“ In reference to the altered back section of the wall and counterforts of the Tidal Harbour and Wet Dock respectively by working drawings supplied June 5th, 1879, which bring each offset of the superstructure on the same vertical and horizontal line throughout.—I have to state that the quantity in excess shewn in drawing will be computed and paid for according to the contract and schedule of rates.”

The Engineers have proceeded upon the principle that the portion of the area occupied by the timber face and the fine concrete shown by the contract drawing to have been displaced under the amended plan by the masonry face is to go in lieu of, and form part payment for, the masonry face, and such portion of the area occupied by the fine concrete as shown by the contract drawing to have been displaced by the coarse concrete backing should go in lieu of, and form part payment for, the coarse concrete.

Cross-Interrogatory 26 and Mr. Kinnipple's answer thereto leave no doubt upon this point, they read thus :

“ *26th Cross-Interrogatory* :—Is it not a fact that the second and seventh items of the Defendants' Exhibit No. 1A are not intended to certify that the timber face therein mentioned was ever built or that the fine or 4 × 1 concrete therein mentioned was ever done, but on the contrary do not said items 2 and 7 merely intend to convey that the contractors were entitled to receive the sums mentioned in these items for work substituted for and of equal value to the works mentioned in the items 2 and 7 ?

Record, p. 246, l. 27.

“ *Answer*—I say that the timber facing and fine concrete backing were replaced by a stone facing with a coarser concrete backing and the contract amounts of the former items went in part payment of the two latter items, as to the balance an additional sum was allowed to the contractors.

28. The quantity of coarse concrete backing placed in rear of the masonry face from 4 feet above low water to coping level is proved to have been approximately 16079 yards.

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Evidence of St. George Boswell, p. 462, l. 15.

Do. H. Peters, p. 464, l. 4 and p. 465, l. 5.

Do. Colonel Moore, p. 430, l. 8.

Do. Cummings, p. 413, l. 9.

Defendants' Exhibit at trial B 26, p. 629, l. 15.

p. 629, l.
15.

29. The Engineers in their final certificate have allowed to the contractors, items 1, 30, 31, 32, Defendants' Exhibit 1 and Defendants' Exhibit 1 A, items 22, 49, 50 and 51, 13545 c. yds. in lieu of 16079 c. yds. of coarse concrete backing that was placed in rear of the masonry face of the Tidal Basin and Wet Dock Walls, 10 from 4 feet above low water to coping level, or 2523 c. yds. less allowed than the quantity of the coarse concrete backing that was placed in rear of the masonry face of the wall by the contractors.

30. The Engineers maintained that the 2523 c. yds. of coarse concrete placed in the works by the contractors in excess of the quantity allowed by the certificate was in lieu of so much of the fine concrete which went in payment for the excess of the coarse concrete backing.

31. The area occupied by the timber face as shown by the contract drawing and bills of quantities from 4 feet above low water to coping level, is 66636 cubic feet, or 2468 cubic yards or approximately, an average thickness of one foot for 20 the entire face of the Tidal Basin and Wet Dock Walls.

32. The area occupied by the Portland Cement fine concrete, as shown by the contract drawings, from 4 feet above low water to coping level in rear of timber face of the superstructure of the Tidal Basin and Wet Dock Walls, was 107, 838 cubic feet, or 3, 994 cubic yards or approximately an average thickness of one foot and seven inches over the entire face of the wall. The timber face and fine concrete combined occupied an area in the face of the wall of 174,474 cubic feet or 6462 cubic yards, or an average thickness over the entire face of the wall of 2 feet 7 inches.

33. The Masonry Face as shown in the contract drawings and specification B, 30 occupied an area in the superstructure of the walls from 4 feet above low water to coping level of 114,075 cubic feet, or 4,225 cubic yards or approximately, an average thickness of one foot and eight inches over the entire face of the wall, thus showing that only 1757 cubic yards of the fine concrete was displaced by the masonry face, and that 2237 cubic yards of the fine concrete was displaced by the coarse concrete backing, while the contractors have placed 2523 c. yds. of the coarse concrete backing in the walls in excess of the allowance of 13,545 cubic yards as made by the Engineers in the Final Certificate for the coarse concrete, and as stated by the Chief Engineers' answer to cross-interrogatory 26 : 40 concrete backing.

34. Under the amended plan of June 5th, 1879, Plaintiff's Exhibit 24, (being the small plan sent forward as part of the record) showing the Masonry face, and

the Engineers' letter of July 22, 1879, above set out, the Engineers increased the height of the substructure of the wet dock walls from three feet above low water to 4 feet above low water, at the same time doing away with all the work called for by the original plan from 3 feet above low water to coping level, and by the amended plan, required the contractors to raise the substructure one foot in height, 9 feet in width and 2310 feet in length, which area was filled with coarse concrete in excess of the allowance made for the fine concrete for the face of the works. This also increased the width of the whole substructure. The Engineers have allowed for this to the contractors, in their Final Certificate under the authority of clause 48 of the specification as for extra work. This accounts for the increase in the items of Defendant's Exhibit 1 A for the concrete over and above the quantities allowed in the bills of quantities for the same items as contained in the contract Blue Book. ¹⁰

Record,
p. 101.

35. Item 4.—\$6,838.44. This is a claim for the full amount of Bill No. 7, of the contract specification. It has been allowed in full by the judgment of the Courts of Queen's Bench. The Plaintiff in his statement of account delivered to the Appellants on the 9th of March, 1887, claimed in respect of this item, \$4,319.27: in that of the 8th of January, 1891, \$4,582.21. The detail of the final certificate allows \$4,184.21. The difference between the amounts claimed and that allowed is explained by the Plaintiff's Exhibit "A" 49. A statement of work not done but which the Plaintiff claimed had been allowed for. The item in question is as follows: "Bill No. 7.—Wood and Iron works \$2,654.23." This sum added to the amount allowed by the detail of the certificate, Defendants' Exhibit 1A annexed to the commission, agrees to a cent with the amount of the whole bill. The Respondents have therefore claimed and the Court has allowed to them a sum of \$2,654.23 more than was allowed by the Engineers for the work done by them. This item is connected with item 26 of Plaintiff's account, "Engineers allowance for fenders \$1,038.00." Certain work was done in connection with the fenders which the contract called for upon the quay wall. The Engineers decided to omit the fenders and in fact no fenders were put upon the works as built. Some work however, had been done by the Plaintiff, in connection with the fenders and an allowance to cover such work was made by item 26. Respondents are allowed this sum, it is one of the items admitted by the Appellants. They are not content with taking the allowance made for the work done which was part of the contract works, but they also wish the whole price stipulated in respect of this work not done, thereby claiming twice payment for the work actually done and in addition the balance of price for work not done. ²⁰

Record,
p. 585.

Record,
p. 102.

36. Item 5.—Bill 8. This amount has been allowed in full. There is a difference of \$190.12 between this sum and the detail of the Engineers certificate. This difference can only be explained by a deduction for fenders not put on the works. ⁴⁰

Record,
p. 424, l. 1.

37. Item 6, was disallowed by the Court of Queen's Bench.
38. Item 7, 4 cribs of 40 foot each as per bill No. 1. The contract provided for 27 cribs, 31 in all, were built. The 4 additional cribs are claimed by this

item 7. In this item, the Respondents have claimed payment for fenders not put upon the works, amounting, according to their own statement, exhibit "A 49", Record p. 585, to \$215.88.

39. Item 25. Pile or stub foundations. The Plaintiff claimed in respect to this \$4,378.65, never at any time did he put forward this claim until instituting this action. This item does not appear in the previous statements handed by him to the Appellants.

The Court of Appeals has allowed the sum of \$1692. This work was part of that belonging to the Appellants, but by contract contained in correspondence exchanged in 1878 and 1879, Simon Peters covenanted to do the work for Moore & Wright at their risk and undertook that he would charge the cost of doing the works only. He sent in an account in 1881, for \$1692.70. This account never was admitted by the Appellants and Col. Moore, the only witness who was examined upon the subject, contends that the real value of the work was about one-half the amount. Further if the rule laid down by the Court on the subject of prescription of the respective claims, of the contractors against one another be sound, the whole of this amount would be prescribed. Record, pp. 615 & 616. Record, p. 428, l. 12.

40. The remaining items of the account save those admitted by the Appellants and a few of such trifling amounts as not to be worth discussing have been held by the Court to be prescribed and they have applied the same rule to the Appellants' contra accounts which amount to a very large sum.

The Chief Justice of the Court of Queen's Bench thus expressed himself on the subject of the prescription of the claims for expenses incidental to the contract.

" Il est vrai que dans l'acte de dépôt de la balance du prix de construction à la banque Union, les parties déclarent qu'ils n'ont pas déterminé leur part respective dans le prix du contrat et dans les dépenses accessoires. La prescription court du jour où le droit d'action existe et ce montant pouvait être réclaté à la fin de l'occupation de la Cour et du Quai. Les deux parties d'ailleurs ont interprété aussi l'acte de dépôt puisque toutes deux ont invoqué la prescription contre la demande faite par chacune d'elles de dépenses communes et accessoires du contrat." Record, p. 734, l. 2.

This statement is inexact. The claims made by each party against the other are of two classes—some forming part of the joint expenses of the contract—others entirely in the interest of the party against whom the claim is made.

41. With respect to none of the accounts for expenses incurred in the joint interest of both parties have the Appellants pleaded prescription, and in urging it against certain of the Respondents' accounts, they did so expressly because such accounts did not form any part of the contract accounts. Record, p. 698, l. 23. & p. 701, l. 1.

42. The contract of the 4th May, 1877 provided "that with respect to incidental expenses attending the works which have hitherto been unanticipated or Record, p. 5, l. 41.

Record, p. 11, l. 11. " unprovided for, the same shall be borne by the said parties to these presents
 " *pro rata* to the value (to be established by the schedule of prices annexed to
 " the said main contract) of the amount of works to be by them respectively
 " executed under this contract." The agreement of the 29th October 1892,
 1. 22. recited " that whereas, the parties to this agreement being interested in the
 " amount of the judgment, have not yet determined their respective shares in the
 " amount thereof, and in the expenses and liabilities connected with the contract
 " and with the law-suit in which such judgment was rendered," and the money
 " was deposited in the bank " to remain there at interest at 4% as a special deposit
 " until the respective shares of the parties to this agreement are finally esta- 10
 " blished."

43. The actual amount payable to the contractors jointly was only settled by the judgment of the Supreme Court on the 17th of November 1891. The shares of the contractors among themselves are still undetermined and will only be determined by the judgment upon the present appeal. Under these circumstances the Appellants submit that neither party had any acquired right of action against the other for any proportion of the expenses incurred by him, in the common interest of the contractors, until the interest of each of the contractors in the contract moneys had been determined by agreement or otherwise.

44. The Appellants' claims against the Respondents for the repayment of their 20
 proportion of a sum of \$53,845.46, expenses, including interest, incurred in the common interest of the contractors, were all of them set aside by the Court of Queen's Bench, on the ground that they were barred by lapse of time or were unproven: and on the same ground a further account amounting to \$8,427.38 for work done by the Appellants for Simon Peters in his (Peters) sole interest was also rejected.

45. Of the charges common to the contractors they have allowed $\frac{1}{3}$ of \$1799.56 rent and taxes, deducted by the Quebec Harbour Commissioners from the sum payable under the judgment against them. A sum of \$1255.43 the proportion admitted by Peters of the sums of \$1200 and \$1871.50 paid to the Hon. J. G. 30
 Bossé and \$1634.94 proportion of \$4,000 paid to Mr. Cook. The real amount paid to Judge Bossé was \$4019.15 to Mr. Cook, \$7,240, both amounts being in connection with the litigation of Peters, Moore & Wright against the Quebec Harbour Commissioners. The proof of these payments is to be found in the receipts produced, B, 30 and B 31, pages 631, 632 and 633 and in the deposition of Col. Moore. Upon these items alone, in respect of which the judgment is
 Record, p. 632, l. 1. clearly erroneous, the Appellants have been wronged to the amount of \$862.68.
 Record, p. 439, l. 12.
 p. 459, l. 6

46. The Appellants in addition to the foregoing, a part of which is admitted by the Respondents, claim payment of the Respondents' proportions of the following accounts; viz: Engineering Labour and Legal Expense accounts, (Defendants' 40
 Exhibits No. 4, 5 and 6.)
 Record, p. 30.

Record, p. 28, l. 16. 47. By clause 26 of the specification annexed to the contract with the Quebec Harbour Commissioners, the Contractors were obliged to erect a proper office for

the Engineers: by the 29th clause they were obliged to employ a competent agent and by clause 32, they were compelled to heat, light and maintain the Engineers' offices, supply all instruments required by them, all labour, boats, boatmen, etc: all these obligations were fulfilled by and at the exclusive cost of the Appellants. They claim to be repaid by the Respondents their proportion of these expenses. Record, p. 30, l. 2.

The total of the engineering account amounts to \$13702.21 (of which more than half is for interest). The proof of the account will be found in the deposition of Colonel Moore, p. 433, l. 38 and in that of A. H. Jacobs p. 403, l. 20 and seq :

The Appellants paid for the salary of the Contractors' Engineer and Agent, expenses of maintenance of the Quebec Harbour Commissioners Engineers' Office, etc. (including interest)	\$13702 21
For labour in the interest of the joint contractors including interest.	385 62
For legal, Engineering and incidental expenses (including interest.)	39575 63

50. The Respondents' account, made upon the basis of the allowances made by the Engineers, is as follows :

20	Bill No. 1.—	Timber and iron work in substructure and superstructure of 27 crib Blocks, South Tidal Harbour.	\$ 43,389 00
	Bill No. 2.—	Timber and Iron work in Angular Block	386 61
	Bill No. 3.—	Two square 40 feet Blocks. The full amount of this bill \$17,486.34 has been deducted by the Engineers in the item of \$116,104.32, as the work was not done	
	Bill No. 4.—	Timber and Iron Work in substructure and superstructure of 55 Wet Dock Crib Blocks.	63,893 25
30	Bill No. 6.—	Timber and Iron Work for Bridge opening of 80 feet, 6 in. span. The full amount of this bill \$3,505.48 has been deducted in the item of \$116,104,32 as the work was not done.	
	Bill No. 7.—	Timber and Iron work in open crib work to outer slope of the embankment next to the Ballast Wharf	1,184 21
	Bill No. 8.—	Timber and Iron work in open crib work, in the outer slope of the embankment, at Gas House Wharf.	2,705 05
			\$114,558 09
	Bill No. 9.—	Screens to protect the dredged channelways and trenches. Transferred to Moore & Wright under the written contract between Simon Peters and Moore & Wright	

- Bill No. 10.—Timber and Iron Work in the low open crib work across 80 foot entrance. The full amount of this bill \$365.68 has been deducted in the item of \$116,104.32 as the work was not done.....
- Bill No. 11.—Timber and Iron Work in four Ladders to the north wall of the South Tidal Harbour. The full amount of this bill \$94.12 has been deducted in the item \$116,104.32, as the work was not done.....
- Bill No. 12.—Timber & Iron Work in eight Ladders to the north wall of the South Wet Dock. The full amount of this bill \$198.40 has been deducted in the item of \$116,104.32 as the work was not done 10
- Bill No. 13.—For labor of pitching to outer slope and the forming of the roadway on the Northern Embankment. This work was to have been done by Mr. Peters under the terms of the written contract between Simon Peters and Edward Moore and A. R. Wright. The full amount of this bill \$5,180.50 has been deducted in the item of \$116,104.32, as the work was not done.

EXTRAS ALLOWED BY THE ENGINEERS FOR WOOD AND IRON WORK. 20

Timber and Iron Work in the four extra crib blocks of the substructure and superstructure of the Tidal Basin.....	\$	6,428	00
Extra Allowance as per the terms of the written contract between the Quebec Harbour Commissioners and Peters, Moore & Wright for building the masonry face to the walls.....		21,940	61
Timber and Iron Work in the angular crib at ballast wharf.....		89	56
Two Tablet Stones.....		300	00
Excess of Timber and Iron Work in the 31 Tidal Harbour Crib Blocks, Bill No. 1.....		8,186	17
Excess of Timber and Iron Work in the 55 Wet Dock Cribs, Bill No. 4.....		3,822	50
Widening and bolting piles to Wet Dock Cribs.....		1,846	35
Extra Timber and Iron Work connected with cribs, Bill No. 7, at ballast wharf.....		5,219	55
Entremise filling between fenders.....		194	03
Gas House Crib Work and Excavation in connection with Bill No. 8.....		1,232	90
Timber and Iron Work in substructure between Ballast and Gas House Wharf.....		16,088	90
Timber and Iron Work in superstructure of northern crib work..		58,059	53
Piling at Angle Ballast Wharf.....		1,143	07
Piling at change of slope.....		624	65
Crib and piling at return and Wet Dock.....		304	27
Timber and Iron Work connected with 85 Bollard Boxes.....		1,617	12
Allowance for Fenders and Iron Work partly constructed.....		1,038	00
25 Barrels of Portland Cement.....		88	75

not by Messrs. Grout & Co!
35.

	Allowance by Moore & Wright to Mr. Peters, for 1783½ cubic yards of fine concrete as applicable towards the payment for the masonry face of the Wet Dock and Tidal Basin Walls, at \$6.25 cubic yards.....	\$ 11,148 75	
		\$ 253,930 81	
	By Cash received to Feb. 4th 1886.....	237,452 11	
		\$ 16,478 70	
	Interest on \$16,478.70 from Feb. 4th 1886 to March 9th 1887, 1 year, 1 month and 5 days at 6%.....	1,084 78	
10	March 9th 1887, By cash on account.....	\$ 17,563 48	2,500 00
		\$ 15,063 48	
	Interest on \$15,063.48 from March 9th 1887, 6 months and 4 days at 6%.....	461 86	
		\$ 15,425 34	12,500 00
	September 13th 1887, By cash on account.....	\$ 3,025 34	
	Interest on \$3,025.34 from September 13th 1887, to July 25th 1892, 4 years, 10 months and 12 days at 6%.....	883 16	
20	Interest on \$3,024.94 from July 25th 1892, to October 25th 1892, 3 months at 4%.....	30 25	
		\$ 3,938 75	
	October 25th 1892, By cash paid on orders to Samson Estate and Bank of Montreal.....	15,000 00	
	Total amount overdrawn from the Quebec Harbour Commissioners by Mr. Peters.....	\$ 11,061 25	
	Deduct bonus from overdraft.....	5,000 00	
		\$ 6,061 25	
	Account.....	\$ 14 11	
30	Broken guage pile.....	14 70	
	Peter's account — incidental expenses against Peters, Moore & Wright \$192.42, say ½ against S. Peters and ¼ against Moore & Wright.....	128 26	
	Atalaya—Moorage ½, \$22.....	7 33 off	164 40
		\$ 164 40	
	Due to Moore & Wright.....	\$5,896 85	

51. This account shews a sum of \$5,896.00. overdrawn by the Plaintiff, but contains no charge against him for his proportion of the following accounts :

Deducted by Quebec Harbour Commissioners for rent, taxes, etc..	\$ 1,799	56
Amount paid Judge Bossé.....	4,108	65
Amount paid Messrs. W. & A. H. Cook.....	7,240	00
Engineering account.....	{ 1,093	63
	{ 8,471	48
Labour account in interest of joint contracts.....	385	62
Labour and boatmen—Contractors Engineer.....	1,038	16
Paid Mr. Cook, Q. C.....	500	00
“ J. V. Brown, expenses and services during arbitration.....	300	00 10
“ Pilkington.....	500	00
“ J. V. Brown, witness.....	233	00
“ E. B. Cummings.....	146	50
“ A. H. Jacobs.....	96	56
Commission to Portland.....	591	00
Witnesses in Suit.....	229	50
	‡ \$	26,733 66
	\$	8,911 22
Total overdraft by S. Peters.....	5,896	85
	\$	14,808 07 20

52. The Appellants' account calculated on the same principles is as follows :

Bill No. 1.—Allowed for fine, or 4 x 1 concrete rear of timber face of the superstructure of 27 crib Blocks, South Tidal Harbour.....	\$ 7,593	75
Bill No. 1.—Allowed for coarse or 8 x 1 concrete in 27 crib Blocks, South Tidal Harbour, in substructure and superstructure, as per amended plan.....	79,467	65
Bill No. 4.—Allowed for fine or 4 x 1 concrete, rear of Timber face of the superstructure of Wet Dock crib Blocks, as per amended plan of June 5th, 1879.....	16,239	30 30
Bill No. 4.—Allowed for coarse or 8 x 1 concrete, in 55 Wet Dock crib Blocks in the substructure from foundation to 4 feet above low water datum and in the superstructure in rear of the masonry wall, as per amended plan of June 5th, 1879.....	103,669	90
Bill No. 5.—Dredging 638,700 c. yds. Situ measurement in the channelways and trenches, and depositing the dredged material in the embankment.....	159,675	00

Bill No. 9.—Screens to protect the North side of the dredged channelways and trenches as per agreement between Simon Peters and Moore & Wright.....	\$ 614 50
Bill No. 14.—Allowed for levelling clayey material and bringing top surface of the ballast trenches to a uniform level at a depth of 24 feet below low water and for labor depositing Stone Ballast in the walls of the Wet Dock and Tidal Basin	8,255 30

NOTE.—The full amount of this bill, as stated in the contract, is
 10 \$20,349.30 from which amount the Engineers have deducted in the item of \$116,104.32 for work not done \$12,094.00.

ADDITIONAL WORK.

Allowed for fine or 4 to 1 concrete in rear of Timber face of the superstructure of the 4 extra 40 ft. Crib Blocks.....	1,125 00
Allowed for coarse 8 x 1 concrete in the substructure and the superstructure of the 4 extra crib 40 foot Blocks, as per amended plan, June 5, 1879.....	11,771 00

DREDGING AND CONCRETE WORK.

241,723 c. yds. of extra dredging in Tidal basin.....	60,430 81
20 2,925 c. yds. of extra dredging for crib work, and Ballast Wharf...	731 25
For stone, clay and fine ballast as per contract.....	38,083 05
Concrete for foundations Shoal Crib 16 to 1.....	11,485 80
Concrete from deep to shoal crib.....	1,068 35
Concrete at return end Wet Dock substructure.....	713 50
Concrete at return end Wet Dock superstructure.....	402 04
Concrete in Angular Block, Ballast Wharf.....	500 00
Extra dredging and labor making return and Wet Dock Wall.....	100 00
Allowed for coarse concrete as per original Bill of Quantities, superstructure, Tidal Basin Wall.....	22,041 00
30 Allowed for coarse concrete as per original Bill of Quantities, superstructure, Wet Dock Wall.....	35,556 40
Allowed for coarse concrete understated in the original Bill of Quantities as per contract plan.....	4,180 00
Allowed for washings in sand and dredging outside of channelways and trenches at Angle Ballast Wharf.....	5,000 00
Allowed for Boulders placed at toe of slope.....	375 00
Allowed for use of dredge, testing foundations.....	500 00
Allowed for labor and disbursement by Moore & Wright in preparing for reception of Princess Louise in laying the Tablet Stone.	750 00
40 Allowed for concrete hoarding in South Tidal Harbour and Wet Dock Walls in lieu of clay stanks.....	5,000 00
Allowed for stub piling under the South Tidal Harbour and Wet Dock cribs in lieu of stone and clay filling as per amended plan.	4,378 65
	<hr/>
	\$579,707 25

DEDUCTIONS.

Less clerical error and dredging under Tidal Cribs.....	\$ 34,472 00	
		<u>\$545,235 25</u>
Less 3645 cubic yards concrete per Bill No. 1 in rear of masonry face, superstructure 27 Cribs Tidal Harbour. \$17,313.75 and less in pockets (concrete in Tidal Harbour) 104 cubic yards at \$4.75 per 31 blocks, \$15,314.00. These two items form part of the \$116,104.32.....	32,627 75	
		<u>\$512,607 50</u>
Less 6710 cubic yards 8 to 1 concrete rear Wet Dock superstructure	\$ 31,872 50	10
And less in pockets (concrete in Wet Dock 45 cubic yards at \$4.75 per 55 Blocks	11,756 25	
These two items for part of the \$116,104.32.	<u>43,628 75</u>	
		<u>\$468,978 75</u>
Bill No. 5 dredging in Wet Dock channel 5000 cubic yds. at 20 cts.	1,000 00	
This item forms part of the \$116,104.32.		<u>\$467,978 75</u>
Less removal of sand left on the embankment.....	13,326 00	
		<u>\$454,652 75 20</u>
Addition by error and sand item allowed by Supreme Court.....	35,457 50	
		<u>\$490,110 25</u>
Cash payments Quebec, March 26th 1885.....	405,347 48	
		<u>\$ 84,762 77</u>
Less 1787 cubic yards at \$625 of the fine concrete allowed in the original bills of quantities in rear of timber face as shown in items 1, 7 and 21 of Defendant's Exhibit 1 A. The 3994 cubic yards of fine concrete allowed in these items was displaced, under the amended plan, by the masonry and coarse concrete backing but the contract price for the same went towards the payment of the Masonry and coarse concrete. 1787 cubic yards of the area occupied by the fine concrete, was occupied by masonry, and the balance by coarse concrete. The value of this concrete is transferred to the account of Mr. Peters.....	11,148 75	30
		<u>\$73,614 02</u>
Interest on \$73,614.02 from February 4th 1886 to March 16th 1888 at 6%	9,348 87	
		<u>\$82,962 89</u>

By cash March 16th 1888.....	\$15,000 00
	<hr/> \$67,962 89
Interest from March 16th, 1888 to July 25th, 1892 on \$67,962.89 6%	17,908 05
	<hr/> \$85,870 94
Interest on \$67,962.89 from July 25th 1892 to October 25th 1892 at 4%.....	678 87
	<hr/> \$86,549 81

ADD ONE-THIRD OF THE FOLLOWING ACCOUNTS.

10	Amount of Rent and Taxes deducted by Quebec Harbour Commissioners and charged to joint contractors.....	\$ 1,799 56	
2	Amount paid Judge Bossé.....	4,108 65	<i>3721.50</i>
3	Amount paid W. & A. H. Cook.....	7,240 00	<i>l.s.</i>
4	{ Engineers, Account.....	1,093 63	<i>dp. 618</i>
		8,471 48	<i><</i>
5	{ Labour Account.....	385 62	<i>(4 above) <</i>
6	{ Labour and boatmen—Contractors Engineer.....	1,038 19	<i>(p. 449)</i>
7	Paid Mr. Cook, Q. C.....	500 00	<i>50</i>
8	Paid J. V. Brown, expenses and services during arbitration.....	300 00	
9	Paid Pilkington.....	500 00	
20	" J. V. Brown, witness.....	233 00	} <i>l.s.</i>
		146 50	
		96 56	
13	Commission to Portland.....	591 00	<i>l.s.</i>
14	Witnesses in Suit.....	229 50	<i>l.s.</i>
		<hr/> \$ 26,733 69	
		\$ 8,911 23	
		<hr/> 86,549 81	
	Total due M. & W	\$ 86,561 04	

52. Appellants submit that the judgment of the Court of Queen's Bench dated the 27th November, 1896, is erroneous and should be reversed and set aside, and judgment should be entered for them, the Appellants, adjudging to them the full amount of the money on deposit in the Bank for the following among other

REASONS.

1. Because the Respondents are not entitled to payment for the stone wall in the manner and form claimed, to wit, in the sum of \$77,378.50.

2. Because the Respondents are not entitled to the 4th item of their account, amounting to the sum of \$6,838.44.
3. Because the Respondents are not entitled to the 5th item of their account, amounting to \$2,895.14.
4. Because the Respondents are not entitled to the sum of \$1,692.70, amount of the 25th item of the account, but are, if entitled to anything at all, in respect thereof, only to the sum of \$870.00.
5. Because the Respondents are not entitled to the 29th, 30th, 42nd, 46th, 47th, 48th and 49th items of their account. 10
6. Because the Appellants are entitled to the whole sum on deposit in the Union Bank of Canada.
7. Because the Respondents are well and truly indebted to the Appellants in the sum of \$19,363.79, partly for moneys received by the Respondents in excess of the sum payable to the late Simon Peters by the Quebec Harbour Commissioners under the contract and partly for the share and proportion of the said Respondents, in the incidental and joint expenses incurred in connection with the said contract.
8. Because the claim of the Appellants against the Respondents 20 for the proportion payable by the Respondents in the expenses incurred in the common interest of the Contractors is not prescribed and such claims are fully proven.

G. G. STUART.

C. E. BRODIE.

Counsel for Appellants.

In the Privy Council.

*On Appeal from the Court of Queen's Bench,
for the Province of Quebec,
(Appeal Side.)*

BETWEEN

EDWARD MOORE AND AUGUSTUS R.
WRIGHT, . . . (Defendants,) *Appellants,*

AND

SIMON PETERS, . . . *Plaintiff, (deceased,)*

AND

ELIZA JANE LAMOUREUX, Henry Joseph
Peters, Albert Hyacinthe Peters, Joseph
Bernard Peters, and Martial Chevalier,
(*Plaintiffs in continuance of suit,*)
Respondents.

APPELLANTS' CASE.

HARWOOD & STEPHENSON,

31, Lombard Street, E. C.,

Appellants' Solicitors.