

1906  
 {  
 \*Nov. 16, 19.  
 ———

THE TEMISKAMING AND NORTH-  
 ERN ONTARIO RAILWAY COM-  
 MISSION (DEFENDANTS) . . . . . } APPELLANTS;

AND

THOMAS WALLACE (PLAINTIFF) . . . . RESPONDENT.

*Contract—Supply of material—Payment—Certificate of engineer—  
 Condition precedent—Improper interference—Fraud—Hinder-  
 ing performance of condition—Monthly estimate—Final decision.*

**A**PPEAL from the decision of the Court of Appeal for Ontario(1), reversing the judgment of Falconbridge C.J., at the trial and granting a new trial.

The action was for the price of ties supplied by the plaintiff under a contract providing for payment on the certificate of the chief engineer in charge of construction of defendants' railway. The engineer refused to certify for the ties not paid for on the ground that new commissioners appointed had objected to the quality and ordered another inspection. At the trial plaintiff was non-suited, the judge holding that there was no coercion of the engineer, and the want of the certificate was a bar to the action. A new trial was ordered by the Court of Appeal on the ground that there was some evidence of coercion for the jury. The defendants appealed.

After hearing *Tilley* for the appellants, and without calling on *Hellmuth K.C.* and *Geary* for the respondents, the Chief Justice pronounced judgment for the court as follows:

\*PRESENT: Fitzpatrick C.J. and Davies, Idington, Maclellan and Duff JJ.

THE CHIEF JUSTICE (Oral).—Without expressing any opinion on the merits, and especially without adopting the reasons of the Court of Appeal, we are of opinion that this appeal from a judgment granting a new trial should be dismissed, and said judgment confirmed, with costs.

1906  
TEMISKAM-  
ING AND  
NORTHERN  
ONTARIO  
RAILWAY  
COMMISS-  
SION  
v.  
WALLACE.

*Appeal dismissed with costs.*

The Chief  
Justice.

Solicitors for the appellants: *Thomson, Tilley & Johnston.*

Solicitors for the respondent: *Macdonell, McMaster,  
Geary & Barton.*