

1962
*Nov. 15, 16

W. J. CROWE LIMITED (*Defendant*) .. APPELLANT;

AND

1963
**Mar. 7

PIGOTT CONSTRUCTION COM- }
PANY LIMITED (*Plaintiff*) } RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Contracts—Building subcontract—Trial judge wrong in implying term as to progress of construction to permit commencement of work by subcontractor—Subcontractor not excused from performance by reason of alleged breach of contract by general contractor.

The plaintiff, a general contractor, brought an action to recover damages for non-performance by the defendant of a building subcontract entered into on September 16, 1955. The action was dismissed at trial, but, on appeal, the Court of Appeal held that the plaintiff was entitled to succeed. In the circumstances of the case, the trial judge was wrong in implying a term in the subcontract that work on the project would be sufficiently far advanced to enable the defendant to commence work not later than January 1, 1957. Also, in the particular circumstances of the case, the defendant was not excused from performance of the subcontract by reason of the plaintiff's alleged failure to proceed with the work in a proper and expeditious manner or by reason of its failure to provide temporary heating in the buildings under construction. The defendant appealed from the judgment of the Court of Appeal.

Held: The appeal should be dismissed.

This Court was in full agreement with the reasons for judgment delivered by Laidlaw J.A. on behalf of the Court of Appeal.

APPEAL from a judgment of the Court of Appeal for Ontario¹, allowing an appeal from a judgment of Gale J. Appeal dismissed.

W. B. Williston, Q.C., for the defendant, appellant.

J. J. Robinette, Q.C., for the plaintiff, respondent.

The judgment of the Court was delivered by

ITCHIE J.:—After careful consideration of the very thorough arguments of counsel, I have concluded that there is nothing which I can usefully add to the reasons for judgment delivered by Laidlaw J.A. on behalf of the Court of Appeal for Ontario¹ with which I am in full agreement.

*PRESENT: Kerwin C.J. and Cartwright, Abbott, Martland and Ritchie JJ.

**Kerwin C.J. died before the delivery of judgment.

¹[1961] O.R. 305, 27 D.I.R. (2d) 258.

I would accordingly dismiss this appeal with costs.

Appeal dismissed with costs.

*Solicitors for the defendant, appellant: McLaughlin,
Macaulay, May & Soward, Toronto.*

*Solicitors for the plaintiff, respondent: Day, Wilson,
Campbell & Martin, Toronto.*

1963
W. J. CROWE
LTD.
v.
PIGOTT CON-
STRUCTION
Co. LTD.
Ritchie J.