

Case No. 2,425. CAROTHERS v. CHESAPEAKE & O. CANAL CO.
[4 Cranch, C. C. 698.]¹

Circuit Court, District of Columbia.

March Term, 1836.

CONSTRUCTION OF CONTRACT—OBJECTION TO QUANTITY OF WORK DONE
AFTER TIME SPECIFIED.

Under the contract between the plaintiff and the defendant, the final estimate of the engineer, of the amount and value of the work done by the plaintiff, was to be conclusive, unless objected to within twenty days. The plaintiff, within the twenty days, objected to the estimate of the price, but not of the quantity of the work. He cannot, after the twenty days, object to the estimate of the quantity of the work done. It is conclusive between the parties.

At Law. Assumpsit [by John Carothers against the Chesapeake & Ohio Canal Company] for work and labor upon the canal.

A final estimate was made by Rodier, an engineer, and objected to by the plaintiff, within the twenty days allowed by the contract; but his objection was only to the price, not to the quantity, of the excavation. The board of directors, according to the terms of the contract, referred the estimate to Cruger, another engineer, who confirmed the estimate of Rodier. The plaintiff now complains that the quantity of excavation allowed is too small, as well as the price, and has brought his action for the difference, which he claims, both as to price and quantity.

Mr. Brent, for the plaintiff, contended that the decision of Cruger is not binding on the plaintiff, because he had not notice to attend the engineer, who was to be considered as an arbitrator, and whose award has been given ex parte.

But THE COURT overruled the objection; being of opinion that the plaintiff is, by his contract, bound by the decision of Cruger. THE COURT was also of opinion that the final estimate was equally conclusive as to extra work.

¹ [Reported by Hon. William Cranch, Chief Judge.]