

1906
 * April 3-6.
 * April 14.

THE CITY OF TORONTO (DEFEND- }
 ANTS) } APPELLANTS;

AND

THE METALLIC ROOFING COM- }
 PANY OF CANADA (PLAINTIFFS) } RESPONDENTS.

Contract—Work and materials—Faulty work—Extras—Dismissal.

APPEAL from a decision of the Court of Appeal for Ontario (1), affirming the judgment at the trial (2) in favour of the plaintiffs.

Plaintiffs had contracted to cover the roof of a market building in Toronto with sheet metal work. After the work was partly completed a delay occurred of over a year caused by other trades working on the building. When plaintiffs were able to resume work it was found that what they had done was inadequate as the roof leaked badly and the architects instructed them to remedy it, which they were unable to do. They claimed that the fault was in the construction of the roof, the boards being too thin to hold the nails which were to secure the iron covering, while the city claimed that in such case rivets should have been used. Finally the city dismissed plaintiffs and had the work completed by others.

The plaintiffs sued for the value of the work done originally and for that done to prevent leakage as extra work, and for other relief. The Chancellor who

*PRESENT: Sedgewick, Girouard, Davies, Idington and Maclean JJ.

(1) 6 Ont. W.R. 656.

(2) 3 Ont. W.R. 646.

tried the case held them entitled to both, and his judgment was affirmed by the Court of Appeal.

The Supreme Court held that plaintiffs could not recover for extras as the terms of the contract in respect thereto had not been observed. They held, however, that plaintiffs were entitled to damages for wrongful dismissal and directed that the reference ordered by the Chancellor should include such damages. As each party had partially succeeded no costs were given.

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 CITY OF
 TORONTO
 v.
 METALLIC
 ROOFING
 COMPANY OF
 CANADA.

Appeal allowed in part without costs.

Shepley K.C. and *McKelcan* for the appellants.

Tilley and *Johnston* for the respondents.