

LA COMPAGNIE PONTBRIAND v. LA COMPAG-
NIE DE NAVIGATION CHATEAUGUAY ET
BEAUHARNOIS.

1912

*March 6, 7.

*May 7.

*Practice and procedure—Expertise—Appointment of single expert—
Pleadings—Submission of irrelevant questions—Arts. 392-409
C.P.Q.*

APPEAL from the judgment of the Superior Court, sitting in review, at the City of Montreal, affirming in part the judgment of Mr. Justice Bruneau in the Superior Court for the District of Richelieu.

The action was for breach of a contract for alterations and repairs to a ship, and the pleadings involved a counterclaim and an incidental demand. At the close of the evidence the respondents (plaintiffs) made a motion for the appointment of experts to examine the ship in order to ascertain what works were necessary to put it in condition for navigation, and the cost of such works. The motion for the proposed *expertise* was granted forthwith, notwithstanding objections raised on behalf of the appellants, and, without the consent of the parties as to the appointment and choice of an expert or experts, nor allowing an opportunity for recusation, the trial judge *sua sponte*, named one expert for the purpose of ascertaining the matters mentioned. The appellants took exception to the judge's order. The single expert, named, made some investigations, but did not hear evidence of witnesses, and made a report recommending that certain

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

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alterations should be made to the ship at a cost of about \$5,800. The trial judge received this report, and, without any further proceedings, maintained the respondents' action in respect of several items of damages claimed by the principal demand and, in addition, for the sum of \$5,800 mentioned in the report of the expert. From the total amount, so found, the trial judge deducted the amount claimed by the appellants' cross-demand, and condemned them to pay the remainder to the respondents. On an appeal to the Court of Review, this judgment was affirmed as to the principal demand and the cross-demand, and, as to the incidental demand the Superior Court judgment was reversed and the said demand was dismissed.

The appellants, on their appeal to the Supreme Court of Canada, contended that, on the evidence, the principal demand should have been dismissed and the cross-demand maintained, and complained that the appointment of the expert had been irregularly made, without compliance with the requirements of articles 392 *et seq.* of the Code of Civil Procedure and, further, that the trial judge had no authority, on the pleadings, to submit the questions referred to a single expert and that the report should have been disregarded as the expert had not based it upon evidence regularly adduced before him.

After hearing the arguments of counsel the court reserved judgment, and on a subsequent day the appeal was allowed with costs in the Supreme Court of Canada and in the Court of Review, costs in the Superior Court to abide the issue of a partial new trial; it was ordered that the cause should be remitted to the Superior Court to be re-inscribed for

hearing on the roll at the stage it had reached when the motion for *expertise* was made; and it was declared that the appointment of the expert was irregularly made and the questions submitted to him by the trial judge were not relevant in the existing state of the pleadings.

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Appeal allowed with costs.

T. Chase Casgrain K.C. and *George E. Mathieu* for
 the appellants.

Aimé Geoffrion K.C. for the respondents.