

## FAVREAU ET AL. V. ROCHON ET AL.

1912

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL \*March 8, 11.  
SIDE, PROVINCE OF QUEBEC. \*June 14.

*Builders and contractors—Breach of contract—Action for quantum meruit—Rescission—Cross-action for damages—Appropriate relief—Waiver.*

APPEAL from the judgment of the Court of King's Bench, appeal side(1), by which the judgment of the Superior Court, sitting in review at Montreal(2), was set, in part, aside, and the judgment of Lafontaine J., at the trial, was in part restored.

The appellants entered into a contract for the construction of a row of houses for \$13,940, and the time for their completion was agreed upon. There was some delay in the completion of the buildings and the respondents, after taking possession of the buildings, refused to make the final payment provided under the contract on the ground of faulty execution of the works, deviation from specifications and negligence. In an action to recover the balance of \$8,800 remaining unpaid the respondents filed a defence and instituted a cross-action against the appellants for rescission of the contract, reimbursement of \$5,200 paid on account, and for \$9,300 damages for breach of contract, asking also for the demolition of the buildings on account of defective construction. The cases were tried together in the Superior Court and the judgment

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

(1) Q.R. 21 K.B. 61.

(2) Q.R. 38 S.C. 421.

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by Lafontaine J. dismissed the appellants' action, awarded the respondents \$513 for damages, and ordered the return of the money paid on account. By the judgment of the Court of Review this judgment was varied by increasing the damages to \$5,800 and allowing the appellants \$2,930 for balance due them on the contract price. By the judgment appealed from the Court of King's Bench restored the judgment at the trial in so far as it dismissed the action of the appellants and awarded \$513 to the present respondents.

On the appeal, by the contractors, to the Supreme Court of Canada, after hearing counsel for both parties, the court reserved judgment and, on a subsequent day, the judges being equally divided in opinion (the Chief Justice and Duff and Anglin JJ. considering that the appeal should be dismissed; Davies, Idington and Brodeur JJ. considering that the appeal should be allowed and the judgment of the Court of Review restored), the judgment of the Court of King's Bench stood affirmed, no costs being allowed.

*Appeal dismissed without costs.*

*R. C. Smith K.C. and Paul Lacoste for the appellants.*

*Bisailon K.C. for the respondents.*