

étant admissible par suite des aveux du demandeur.

Les dommages encourus par la faute du demandeur en privant le défendeur de jouir des lieux loués au désir du bail sont suffisants pour compenser la demande, mais pas au-delà. La demande incidente est donc mal fondée; et avant de demander la résiliation du bail, le demandeur incident aurait dû assigner son locateur pour le faire condamner à réparer ou voir résilier le bail.

Action et demande incidente déboutées.

Autorités:—C. C. 1070, 1067; 1 R. de L. 348; Lorrain, p. 55, No. 367; *Boulanget & Doutré*; *Marchand & Catty*, voir Lorrain, 57.

Prefontaine, St-Jean & Gouin, avocats du demandeur.

Augé & Lafortune, avocats du défendeur.

(J. J. B.)

DECISIONS AT QUEBEC.*

Contract—Arbitration—Engineer's certificate—Submission—Interest—Art. 1077, C.C.

Action for \$184,241, alleged balance of contract price, and value of various works and materials executed, performed and furnished by respondents for appellants. Plea, that by the contract certain powers were conferred on appellants' engineers, who had determined all points in dispute by their final certificate, and established the balance due at \$52,011, for which a confession of judgment was tendered.

The respondents (plaintiffs) prayed that the certificate be rejected and set aside as false and contrary to the agreement and to truth, to the knowledge of defendants and their engineers, and fraudulent and partial, and that the engineers be declared, by reason of alleged personal pecuniary interest, disqualified and incompetent to pronounce between the parties on the matters in dispute, or to grant a final certificate binding on the plaintiffs.

The contract contained the following stipulations: "All the accounts relating to this contract between the commissioners and the

contractors must be submitted to and adjusted and settled by the engineers, and their certificate, fixing the balance due to the contractors on the completion of the works, shall be conclusive and binding on both parties without any appeal....Should any dispute arise as to the true meaning and intent of the said specifications, bills of quantities, etc., or as to the quality of materials, etc., or the due and proper execution and maintenance of the works, as to liquidated damages for non-completion of the works within the contract time, or rate of progress, or as to the measurement or valuation of the works executed, or as to alterations, deviations, additions, etc., or as to any claim....for work extra, or as to the value of any work for which the prices in the schedule do not apply, or as to accidents, damages, contingencies, or any other matter or thing whatsoever arising out of the contract, the same shall be decided by the engineers as sole arbitrators, and their decision shall be final and binding upon the commissioners and contractors absolutely, and the commissioners and contractors shall be bound to implement and fulfil such decision....And it is hereby understood and agreed....that in the event of any difference of opinion arising between the engineers and the contractors regarding the interpretation to be given to any clause or matter contained in the said supplementary tender, the same shall be decided by the said engineers."

Held, that the above stipulations and agreements, having been voluntarily entered into, were legal and binding on the parties, and in the absence of proof of fraud or collusion between the appellants and the engineers, the certificate of the latter could not be set aside.

Semble, that such certificate may be corrected or reformed by the Court in certain particulars wherein it is shown to be erroneous.

That interest on the sum so awarded will run, not from the date of such certificate, but from the date of the completion of the contract.—*Quebec Harbour Commissioners & Peters et al.*, in appeal, Dorion, Ch. J., Tessier, Cross, Baby, Church, J.J., May 6, 1890.

* 16 Q. L. R.