

SUPREME COURT OF CANADA.

OTTAWA, February 20, 1894.

THE QUEEN v. CIMON.

Quebec.]

Petition of Right—16 Vict. c. 27 (P.Q.)—Contract—Final certificate of the engineer—Extras—Practice as to plea in bar not set up.

A contract entered into between Her Majesty the Queen in right of the Province of Quebec and F. X. Cimon, Esq., for the construction of three of the departmental buildings at Quebec contained the usual clauses that the balance of the contract price was not payable until a final certificate by the engineer in charge was delivered showing the total amount of work done, and materials furnished and the cost of extras and the reduction in the contract price upon any alterations. There was a clause providing for the final decision by the Commissioner of Public Works in matters in dispute upon the taking over or settling for the works. The Commissioner of Public Works, after hearing the parties, gave his decision that nothing was due to the contractors, and the engineer in charge by his final certificate, declared that a balance of \$31.36 was due upon the contract price, and \$42.84 on extras.

The suppliants by their petition of right claimed *inter alia* \$70,000 due on extras. The Crown pleaded general denial and payment.

The Superior Court granted the suppliant \$74.20, the amount declared to be due under the final certificate of the engineer. On appeal the Court of Queen's Bench for Lower Canada (Appeal side) increased the amount to \$13,198.77, interest and costs.

Held, reversing the judgment of the Court *à quo* and restoring the judgment of the Superior Court, that the suppliants are bound by the final certificate given by the engineer under the terms of the contract. *Guilbault v. McGreevy* (18 Can. S. C. R. 609).

Per Fournier and Taschereau, JJ., dissenting, that as the non-production of the final certificate had not been set up in the pleadings as a bar to the action, and there was an admission of record by the Crown that the contractor was entitled to 20 per cent. commission on extras ordered and received, the evidence