

The
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No. 39.

HIGH COURT OF JUSTICE.

DIVISIONAL COURT.

MAY 31ST, 1912.

HAMILTON v. VINEBERG.

Building Contract—Architect—Counterclaim—Further Counterclaim by Party Brought in as Defendant to Counterclaim—Irregularity—Waiver—Practice—Liquidated Damages for Delay—Extras—Assent of Owner—Absence of Collusion between Architect and Contractor—Certificate of Architect—Finality—Cause of Delay—Costs—Scale of Costs—Evidence—Findings of Trial Judge—Appeal.

Appeal by the defendant from the judgment of SUTHERLAND, J., ante 605.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

H. Cassels, K.C., for the defendant.

E. C. Cattanaeh, for the plaintiffs and one Burnham, defendant by counterclaim.

RIDDELL, J.:—Hamilton and Walker are a contracting firm; they entered into a written building contract with Vineberg to build according to the plans of Burnham an architect; after they had finished their work, as they assert, they assigned all moneys due under the contract to Gray, and, with Gray as co-plaintiff, sued Vineberg. Vineberg defended, and added a counterclaim, himself being therein plaintiff, and Hamilton and Walker, Gray, and the architect, Burnham, being the defendants, claiming that the work, etc., was done badly by Hamilton and Walker, with the "connivance" of Burnham, and so the amount paid was more than enough. He claims also against Hamilton and Walker and Burnham for breach of contract—