

The Ontario Weekly Notes

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COURT OF APPEAL.

OCTOBER 11TH, 1909.

THORNTON-SMITH CO. v. WOODRUFF.

Contract — Decoration of House — Payment for Work Done — Satisfaction of Architect—Condition Precedent—Discharge of Contractors—Waiver—New Contract — Findings of Fact — Appeal.

Appeal by the defendant from the order of a Divisional Court, 14 O. W. R. 84, affirming the judgment of BOYD, C., in favour of the plaintiffs for the recovery of \$2,100 and costs.

The plaintiffs, a firm of interior decorators, of Toronto, had been employed by the defendant, who resided at St. Catharines, to do the interior decorating of a house in St. Catharines. Disputes arose between the plaintiffs and the defendant as to some of the work which had been done, and, after some negotiations, an agreement of settlement was entered into whereby the plaintiffs agreed that for \$2,479.85 they would complete the work "to your architect's satisfaction." It was on this memorandum of settlement that the action was brought.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, J.J.A.

Frank H. McCarthy, for the defendant. The plaintiffs did not do the work to the satisfaction of the architect, who declined to accept the same: Andrews v. Belfield, 2 C. B. N. S. 779; Scott v. Liverpool, 3 DeG. & J. 334, 362; Richardson v. Mahon, L. R. 4 Ir. 486; Milner v. Field, 5 Ex. 829; Grafton v. Eastern Counties R. W. Co., 8 Ex. 699; Clark v. Watson, 18 C. B. N. S. 278; Russell v. Sada Bandeira, 13 C. B. N. S. 149; 36 Am. & Eng. Encyc. of Law, 2nd ed., p. 1244. The respondents abandoned the work: Am. &