

details of the sash, in reference to the T-iron frame, in which the architects required an alteration to be made, involving the introduction of a new and special section called the "long flange section." The defendants said that they endeavoured to make the changes, but were delayed in so doing, and were ultimately instructed by the plaintiffs and their architects to proceed with the work as provided in the original contract, which they did—the plaintiffs were responsible for the delay.

The defendants had been paid the contract-price of their material and work.

The action was tried without a jury at Toronto.

R. McKay, K.C., for the plaintiffs.

George Wilkie, for the defendants.

CLUTE, J., in a written judgment, set out at length the facts and the correspondence between the parties. He said that delivery was not commenced or completed within the time stated in the contract; it did not commence until September, 1914, and was not completed until December, 1914. The delivery provided for in the contract was waived by the parties owing to the delay in the endeavour to get the long flange in place of the T-frame, and a new date for delivery was fixed for June following; the plaintiffs still asking for and the defendants endeavouring to supply the long flange. What took place appeared from a long correspondence and several interviews, the result of which, the plaintiffs contended, established a default on the part of the defendants. The defendants contended that, the time for delivery mentioned in the contract having been waived, delivery within a reasonable time was all that was required; that they did deliver within a reasonable time; and that the plaintiffs suffered no loss by the defendants' default, if any.

The fact that article 6 was waived and a new date fixed did not amount to a waiver of that part of the contract which provided that delivery should be made at such time as would not delay construction of the building. It was in the contemplation of both parties that the change would not delay the construction of the building.

It was contended for the defendants that they had a reasonable time to complete, and that the reasonableness must be measured by the circumstances arising at the date when the contract-time had ceased to be applicable, and not at the time the contract was entered into: Hudson on Building Contracts, 4th ed., p. 503, and cases cited; also, that the time for completion