

Judges of the County Court of the County of York dismissing an appeal from the report of an Official Referee.

The action was brought to recover \$800 for material supplied and work done and services rendered by the plaintiff to the defendant. The Referee, after making certain deductions, found the balance due to the plaintiff to be \$696.60.

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

W. G. Thurston, K.C., for the appellant.

H. E. Rose, K.C., for the plaintiff, respondent.

The judgment of the Court was delivered by FALCONBRIDGE, C.J.K.B.:—Pursuant to consent of counsel, I have conferred with the learned . . . Referee. . . . He informs me that his clear impression was that after the plaintiff had gone back to remedy the defects, and he (the Referee) had visited the premises, whatever he might award would be treated as final and conclusive between the parties. In this view and by way of compromise, he allowed the deduction of \$75. In any other view, he feels that he made too great an allowance, and that a much smaller sum, in fact a nominal sum, would have been more reasonable.

He did not, and does not, intend the words "certain work to be done upon it to make it in good condition" to bear the construction that the work was not completed. He would have found specifically, if requested so to do, that the work was not merely substantially but practically entirely completed.

It thus appears that the plaintiff has supplied the thing contracted for, but there are some trifling complaints about its condition—effectually distinguishing this case from those cited, e.g., *Sherlock v. Powell* (1899), 26 A.R. 407.

The appeal will be dismissed with costs.

Leave has been given to appeal from the disposition of costs. We see no reason to interfere. The defendant should have known when he was well off, and rested content with the equitable and reasonable award of the Referee.