

FIRST DIVISIONAL COURT.

JANUARY 31ST, 1921.

***HOUSE REPAIR AND SERVICE CO. LIMITED v. MILLER.**

Building Contract—Remodelling of Houses—Defective Work—Right to Recover for—Deduction from Contract-price for Defects—Evidence—Examination of Details of Work—Extras—Findings of Referee—Appeal—Satisfaction of Owner—Reasonable Conduct—"Putting Properties in First Class Shape"—Inspection by Referee—Complaint not Made Promptly by Owner—Proceeding to Enforce Lien under Mechanics and Wage-Earners Lien Act—Powers of Referee—Employment of Architect to Report—Rule 268—Sec. 34 of Act—Suggested Amendment.

An appeal by the defendant, the owner, from the judgment of a Referee, in a proceeding by contractors against the owner to enforce a mechanics' lien, finding the plaintiffs entitled to be paid \$1,386.80, with interest from the 16th May, 1918, and costs.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

D. L. McCarthy, K.C., and J. Singer, for the appellant.

B. N. Davis and F. A. A. Campbell, for the plaintiffs, the respondents.

HODGINS, J.A., reading the judgment of the Court, said that the sum of \$1,386.80 was made up of the contract-price for remodelling three houses, \$1,500 and \$526.80 for extras, less \$500 paid and \$140 deducted for defects and omissions. The argument of the appeal was followed by lengthy written references to the evidence, which dealt not only with the case generally but traced up each item of defect or shortcoming.

Actions relating to the faulty execution of building contracts, where the parties indulge in evidence running to more than 400 pages, are an enormous and unnecessary expense to them, and result in a disproportionate length of time being devoted to them by the Court, under conditions which can never be satisfactory owing to the nature of the case. They should be dealt with under Rule 268, as was suggested in *Brazeau v. Wilson* (1916), 36 O.L.R. 396, at p. 397. There is some doubt, notwithstanding sec. 34 of the Mechanics and Wage-Earners Lien Act, whether the Referee can act under Rule 268. It would be well if this doubt were resolved by the granting of explicit power to the Referees in this regard, so as to obviate the expense and annoyance occasioned in these cases by the present mode of inquiry. The Act should be amended so as to permit the interposition of architects or