

The plaintiffs agreed to build eight of these houses for the defendants. The plaintiffs did some of the work under the agreement; but the defendants became dissatisfied, and assumed to terminate the contract by virtue of a power said to be given them by the agreement. The damages claimed were for loss of profits, injury to credit, etc.

The plaintiff had brought a previous action against the defendants and had recovered judgment therein for \$1,009.69. The defendants pleaded *res adjudicata*.

The action was tried without a jury at Ottawa.

A. Lemieux, K.C., for the plaintiffs.

E. P. Gleeson, for the defendants.

SUTHERLAND, J., in a written judgment, after setting out the facts and referring to the pleadings and evidence, said that the plaintiffs relied mainly upon *Hayes v. Harshaw* (1913), 30 O.L.R. 157, as an answer to the defence of *res adjudicata*. But the facts in that case were different. The true rule was indicated in *Henderson v. Henderson* (1843), 3 Hare 100, at pp. 114, 115.

The plaintiffs might and should have brought forward their present claim in the former action; and it was now *res adjudicata*.

Apart from that, the contract having been properly put an end to by the defendants by their notice of the 14th August, 1918, pursuant to clause 7 of the contract, the plaintiffs could not maintain an action for damages for breach of the contract.

The right of termination was exercised on reasonable grounds and in good faith.

Action dismissed with costs.

SUTHERLAND, J.

JULY 26TH, 1919

RE LUNNESS.

Will—Construction—"Property Situated in Ontario"—Testator Domiciled in Ontario—Shares of Dominion Railway Company Stock—Head Office of Company in another Province—Certificates Kept in Ontario—Inadmissibility of Extrinsic Evidence to Shew that Testator Meant "Real Property" only—Interests in Residuary Estate—Direction for Sale of Property—Division in Specie among Persons Entitled to Proceeds—Time for Division—Discretion of Executors.

Motion by the surviving executor of the will of Joseph Lunness, deceased, for the advice and direction of the Court as to the proper