

which they had tendered to the respondents without acknowledging their liability, which sum they now brought into Court.

Held, affirming the judgment of the Court of Queen's Bench, (FOURNIER and HENRY, JJ. dissenting),

1. That by their plea of tender and deposit in Court the appellants had acknowledged their liability to the respondents on the contract.

2. That under the circumstances the appellants were prevented by their agreement from claiming a reduction in the price for the deficiency in quantity.

Beigue and Trenholme for the appellants.
Leflamme, Q.C., and *Davidson* for respondents.

G. T. R. CO. V. WILSON.

Verdict—Motion for judgment on verdict—Motion for new trial—34 Vict., cap. 4, sec. 10.

The respondent obtained verdict from a jury in the Superior Court District of Iberville, for injuries caused by the negligence of the appellants. The motion for judgment on the verdict was not made before the Superior Court, District of Iberville, but was drawn up and placed on the record while the case was pending before the Court of Review at Montreal. That Court, on motion, directed a new trial, but the Court of Queen's Bench, on appeal, held that the jury having found that the respondent was lawfully on the highway when the accident occurred and that the appellants could, by the exercise of ordinary care and diligence, have avoided it, rejected the motion for a new trial and directed judgment to be entered for the respondent.

Held, TASCHEREAU and GWYNNE, JJ. dissenting), that the Queen's Bench was right.

Per TASCHEREAU and GWYNNE, JJ. The Superior Court sitting in review at Montreal has no jurisdiction to determine a motion for judgment upon the verdict in a case tried in one of the rural judicial districts, and therefore the Court of Queen's Bench had no power to enter judgment for the respondent upon the verdict.

Per GWYNNE, J.—The Court of Review, on a motion for new trial in the first instance, having in its discretion granted same, judgment should not have been reversed on appeal.

S. Bethune, Q.C., and *McRae*, for appellants.
Carter, Q.C., and *Dawson* for respondent.

SHAW V. ST. LOUIS.

Appeal to Supreme Court of Canada—Final judgment as to part of demand.

The respondent claimed of the appellants \$2,125.75 balance due on building contract. The appellant denied the claim, and by incidental demand claimed \$6,368 for damages resulting from defective works. On 27th March, 1877, the Superior Court gave judgment in favour of the respondent for the whole amount of his claim, dismissing the appellants' incidental demand. This judgment was reversed on review on 29th December, 1877. On 24th November, 1880, the Court of Queen's Bench held that the respondent was entitled to the balance claimed by him from which should be deducted the cost of rebuilding part of the defectively constructed work, in order to ascertain which the case was remitted to the Superior Court, by whom experts were appointed to ascertain the damage, and on their report the Superior Court on 18th June, 1881, held that it was bound by the judgment of the Court of Queen's Bench, and deducting the amount awarded by the experts from the balance claimed by the respondent gave judgment for the difference. This judgment was affirmed by the Court of Queen's Bench on 19th January, 1882.

Held, on appeal, that the judgment of the Queen's Bench of the 24th November, 1880, was a final judgment as to the merits, referring to the Superior Court only the question of the cost of re-building, that the Superior Court, when the case was remitted to them, rightly held that it was bound by that judgment, and that the respondent was entitled to the balance thereby found due to him, and therefore this appeal should be dismissed.

Kerr, Q.C., for the appellants.

Doutre, Q.C. and *Ouimet, Q.C.*, for respondents.

BAIN V. CITY OF MONTREAL.

Assessment for flagstone paving—Resolution of City Council—Validity of proceedings—Onus of proof—37 Vict., cap. 51, sec. 192 (Q.)—C. C. arts. 1047, 1048.

Under 37 Vict., cap. 51, sec. 192 (Q), the respondents' Council, adopting the reports of the road and finance committees, ordered a flagstone paving to be laid in front of the appellant's property, amongst others, half of the cost to be