

floor plaintiff claimed that defendant had agreed to accept this reduction in price and to waive his right to compliance with the contract. This was disputed, but there was no doubt that the plaintiffs had refused to remedy the defects in the shelving in spite of protests from both defendant and the architect, and that there was no waiver as to that. On 6th March, 1901, the architect further certified as follows: "This is to shew that by certificate given by me on the 23rd of January, 1900, I certified that Davidson Bros. were entitled to \$416.36, from which the amount of \$4.25 was deducted to cover some small items left undone. These have now been attended to, and I therefore certify that Davidson Bros. are entitled to \$416.36 in full of contract and extras." At the trial evidence was given to shew that the work in several other respects had not been properly done, and the architect himself admitted that several important matters besides the floor, roof and shelving had been improperly attended to or altogether left undone.

Held, 1. It was a condition precedent to plaintiffs' right of recovery that the work should be completed to the satisfaction of the architect: that the certificates relied on shewed in themselves that the work had not been completed in all respects in accordance with the specifications and failed to shew that the architect was satisfied with the work, and that consequently the plaintiff could not recover. *Conty v. Clark*, 44 U.C.R. 222, followed.

2. The plaintiffs were not entitled to recover the amount claimed for the work done as having substantially performed their contract or on account of defendant occupying and using the buildings.

Sherlock v. Pant, 26 A.R. 407; *Munro v. Butt*, 8 E. & B. 738; *Sumpter v. Hedges* (1898) 1 Q.B. 673; and *Brydon v. Lutes*, 9 M.R. 468, followed.

Per DUBUC, J. The evidence justified the finding that there had been collusion between the architect and the plaintiffs, resulting in the defendant being defrauded, and therefore the defendant was not bound by the architect's certificates.

Appeal from the verdict of DUBUC, J., dismissed with costs.

E. L. Taylor, for plaintiffs. *Ewart*, K.C., and *A. C. Ewart*, for defendant.

Province of British Columbia.

SUPREME COURT.

Full Court.]

COVERT v. PETTIJOHN.

[April 22.

Water record - Validity of - Ditch - Continuation of into United States and back into Canada - C.S.B.C. 1888, c. 66, ss. 39 et seq.

Plaintiff and defendant were owners of adjoining ranches in Yale District both bounded on the south by the International boundary line.