

is there any indication of collusion between architect and contractor. Under these circumstances, the certificate of the architect must be final.

Moreover, the finding of the trial Judge that the delay was caused by the owner himself, I think is wholly justified—as are the other findings made by him.

I think the appeal should be dismissed with costs—but with a direction that the costs to be allowed Burnham in his judgment against Vineberg are to be costs on the Division Court scale without a set-off—the costs of the appeal to be on the scale of an appeal to the High Court from a Division Court judgment. In other words, Burnham is to be put in the same position as though he had brought his action in the Division Court; but Vineberg should pay on the appeal costs as though he had unsuccessfully appealed to the Divisional Court from a Division Court judgment.

BRITTON, J., agreed in the result, for reasons stated in writing.

FALCONBRIDGE, C.J.:—I do not think that, in view of the finding (which is not attacked) that the architect was not guilty of fraud or collusion with the plaintiffs, this appeal can succeed on any of the grounds put forward. As to the extras, the architect certainly took a great deal for granted in favour of the plaintiffs. The evidence of the plaintiffs, leaving out the architect's extraordinary acquiescence in the plaintiffs' demands, and his apparent indifference to his client's interests, was, I think, so vague, sketchy, and unsatisfactory, that I should have been better satisfied if we could have seen our way to direct this branch of the case to be retried.

But, as the architect was the defendant's own agent, and the evidence satisfied the trial Judge, and as my learned brothers agree in thinking that on principle the course above suggested ought not to be adopted, I have not a sufficiently strong opinion to justify me in recording a dissent.

*Appeal dismissed.*