

manner mentioned in the said promissory note. The defendant pleaded that the deed did not effect a novation of the debt, and that the amount due by the promissory note was prescribed by more than five years. The note was not produced at the trial.

*Held*, reversing the judgment of the Court of Queen's Bench for Lower Canada (appeal aside), Q.R. 2 Q.B. 489, that the deed did not effect a novation: Arts. 1169 & 1171, C.C. At most, it operated as an interruption of the prescription and a renunciation to the benefit of the time up to then elapsed, so as to prolong it for five years if the note was then overdue: Art. 2264, C.C. And as the onus was on the plaintiff to produce the note, and he had not shown that less than five years had elapsed since the maturity of the note, the debt was prescribed by five years: Art. 2260, C.C.

As to the other items of the accounts, the Supreme Court restored the judgment of the Court of Review, whereby the amount found due to plaintiffs was compensated by the balance to the credit of the defendant which appeared in the plaintiffs' books.

Appeal allowed with costs.

C. A. Geoffrion, Q.C., for the appellant

A. Ouimet, Q.C., for the respondent.

Quebec.]

ROYAL ELECTRIC CO. v. CITY OF THREE RIVERS.

*Contract—Electric plant—Reference to experts by court—Adoption of report by two courts—Reference clause in contract to arbitration.*

The Royal Electric Company having sued the city of Three Rivers for the contract price of the installation of a complete electric plant, which under the terms of the contract was to be put in operation for at least six weeks before payment of the price could be claimed, the court referred the case to experts on the question whether the contract had been substantially fulfilled, and they found that owing to certain defects the contract had not been satisfactorily completed. The Superior Court adopted the finding of fact of the experts, and dismissed the action. The Court of Queen's Bench for Lower Canada (appeal aside), on an appeal, affirmed the judgment of the Superior Court. On appeal to the Supreme Court of Canada,

*Held*, (1) Where there are concurrent findings of two courts on a question of fact, this court will not interfere, unless the findings of fact are conclusively wrong.

(2) That when a contract provides that no payment shall be due until the work has been satisfactorily completed, a claim for extras, made under the contract, will not be exigible prior to the completion of the main contract.

*Quere*: Whether a right of action exists, although a contract contains a clause that all matters in dispute between the parties shall be referred to arbitration. See *The Quebec Street Railway Company v. The City of Quebec* (13 Q.L.R. 201).

Appeal dismissed with costs.

Beque, Q.C., and Geoffrion, Q.C., for the appellant.

Geo. Irvine, Q.C., for the respondent.