

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Que.]

WHITING v. BLONDIN.

[March 10.

*Contract—Condition precedent—Right of action.*

In a contract for the construction of works, it was provided that the works should be fully completed at a certain time and that no money should be payable to the contractors until the whole of the works were completed. In an action by the contractors for the full amount of the contract price, the trial judge refused leave to amend the claim by adding a count for quantum meruit. He found that the works were still incomplete at the time of action, but entered judgment in favour of the plaintiffs for a portion of the contract price with nine-tenths of the costs. The defendant appealed from this decision and the trial court judgment was affirmed by the court of review.

*Held*, reversing the judgment appealed from, that, as the whole of the works had not been completed at the time of the institution of the action, the condition precedent to payment had not been accomplished and the plaintiffs had no right of action under the contract. Appeal allowed with costs.

*Lafleur*, K. C., and *Cate*, for appellant. *Belcourt*, K. C., and *Panneton*, K. C., for respondents.

Que.]

CHAMBLY MANUFACTURING CO. v. WILLET.

[March 25.

*Appeal—River improvements—Continuing damages—Contract—Protective works—Discretion of court below—Practice—Exception—Acquiescence—Motion to quash.*

Owing to the condition of the locality and the character of certain improvements made for the purpose of increasing the water power at Chamby Rapids, in the Richelieu River, the parties entered into an agreement respecting the construction of dams and other works at the locus in quo, and it was provided that the company should assume the responsibility and pay for all damages caused by "flooding of land, bridges or roads, if any, as well as all other damages caused" to the plaintiff "during or by reason of" the constructions.

*Held*, reversing the judgment appealed from, that under the agreement the plaintiff could recover only such damages as he might suffer from