

DIVISIONAL COURT.

MAY 31ST, 1912.

HAMILTON v. VINEBERG.

3 O. W. N.

Contract — Building Contract in Writing — Provide Materials and Perform All Work — Specifications for Dwelling House — Costs.

An action by contractors to recover \$1,627.49 on account of work done for defendant in erecting a dwelling-house.

SUTHERLAND, J., 21 O. W. R. 75; 3 O. W. N. 605, gave plaintiff judgment for \$1,544.04, and D. Burnham, defendant, by counterclaim \$60 against Ellis Vineberg.

DIVISIONAL COURT dismissed appeal from above judgment by defendant Vineberg, but with a direction that the costs to be allowed Burnham against Vineberg should be on Division Court scale without a set-off. Cost of appeal to be on scale of an appeal to High Court from a Division Court judgment.

An appeal by defendant from a judgment of HON. MR. JUSTICE SUTHERLAND, 21 O. W. R. 75; 3 O. W. N. 605.

Action by Hamilton and Walker, a contracting firm, to recover amount agreed upon for the erection of a house for the defendant Vineberg, and for extras.

Plaintiffs entered into a written building contract with defendant Vineberg to build according to the plans of D. Burnham, an architect. After they had finished their work as they claimed they assigned all moneys due under it to one Grey and with Grey as a co-plaintiff sued Vineberg. Vineberg defended and added a counterclaim, himself being therein plaintiff, and Hamilton and Walker, Grey and the architect Burnham being the defendants claiming that the work, etc., was done badly by Hamilton and Walker with the "connivance" of Burnham, and so the amount paid was more than enough. He claimed also against Hamilton and Walker and Burnham for breach of contract, and against Hamilton and Walker for \$250 liquidated damages for delay. Further that Burnham acted with such gross carelessness and negligence and so ignorantly as well as collusively with Hamilton and Walker that the certificates given by him should be set aside and cancelled.

D. Burnham (by the same solicitor as Hamilton and Walker) set up a counterclaim against this counterclaim for \$60 on account of contract \$48.72, being 3 per cent. of extras in all, \$108.72 and interest thereon. Upon this Vineberg joins issue.