

decision in his case against the Royal Insurance Co., noted ante p. 218. By consent both appeals were argued together, plaintiffs' counsel stating that they were satisfied with the judgments of the Court below, but were compelled to enter their appeal so as to save their rights in case the appeal of the Manitoba Assurance Co. should be successful. After the argument both appeals were dismissed with costs. *Western Assurance Co. v. Doull*, 12 S.C.R. 446; *Commercial Union Assurance Co. v. Temple*, 29 S.C.R. 206; and *Western Assurance Co. v. Temple*, 31 S.C.R. 373, followed.

Macdonald, K.C., and *Haggart, K.C.*, for plaintiffs. *Munson, K.C.*, *Hudson, Tupper, K.C.*, and *Phillips*, for defendants.

NOTE.—It was intended that the reports of the above cases printed at pages 218 and 174 of this volume should have appeared together and in the above order.

Full Court.]

DAVIDSON v. FRANCIS.

[May 31.

Building contract—Architect's certificate—Completion of work to satisfaction of architect—Collusion between proprietor and architect—Substantial fee—Foreman of work.

Plaintiff sued for the balance unpaid of the contract price of the erection of certain buildings for defendant under an agreement, which provided that the plaintiff should execute and complete the work in accordance with the specifications and drawings by a fixed date, and to the satisfaction of an architect named, whose decision was to be final and conclusive, that interim payments should be made as the work progressed, on the certificates of the architect, and that the balance unpaid on the completion of the work should become payable in one month after the architect should have certified thereto. On Jan. 23, 1900, the architect gave plaintiff what purported to be a final certificate, which was in part as follows:—"I hereby certify that Davidson Bros. are entitled to four hundred and sixteen dollars 36.100 in full for above contract and extras less \$4.25, which amount may be held back till the items of work in the following list are done."

Then followed the items covered by the \$4.25 and this note, "I consider the guarantee in specification will cover any leak in roof."

The guarantee alluded to reads: "It is understood that the contractor, by signing this specification, will guarantee the roof for five years against ordinary wear and tear."

Annexed to and forming part of this certificate was a statement shewing how the \$416.36 was arrived at, specifying the total of the contract price, the allowances for extras and the deduction of amounts paid on prior certificates and besides, the following: "Deduction for bad flooring, etc., \$50.00." This last item was made up of \$47.00 allowed defendant on account of the floor being inferior to the requirements of the contract, and \$3.00 because of the use of inferior lumber in the shelving. As to the