

CANADA / JUDGMENT

Ross v. Barry

(1891) 19 SCR 360

COURT

Supreme Court of Canada

DECIDED

22 June 1891

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Ross v. Barry Collection Supreme Court Judgments Date 1891-06-22 Report

(1891) 19 SCR 360 On appeal from Ontario Subjects Contract Decision Content Supreme Court of Canada Ross v. Barry, 19 S.C.R. 360 Date: 1891-06-22 Ross and Barry 1891: January 28, 29; 1891: June 22. Contract—Evidence—Quality of work—Conversation between parties—Claim for increased price. APPEAL from a decision of the Court of Appeal for Ontario affirming the judgment in favor of the plaintiffs (respondents). The plaintiffs, Barry & Smeaton, were sub-contractors for the mason work on a portion of the line of the Grand Trunk Railway Co. for constructing which Ross & McRae, the defendants, had the contract. In a conversation between the plaintiff, Smeaton, and the defendant, McRae, before the work was begun Smeaton was given to understand that the standard of the second class masonry to be built by plaintiffs was to be equal to that on the “Loop Line” another part of the Grand Trunk system, and shortly after McRae wrote to plaintiff instructing them to go on with the work “according to the plans and specifications furnished by the company.” The plaintiffs had completed a portion of their work when they were informed by the engineer in charge that the quality of second class masonry was to be of a higher standard than they had supposed, which would increase the cost of construction from twenty-five to thirty per cent, whereupon they refused to proceed until Smeaton, who was present at the time, told them to go on and finish it as directed by the engineer and they would be paid. They then pulled down what they had built and proceeded as directed. When the work was nearly done Smeaton tried to back out of his agreement to pay the increased price, but renewed it on plaintiffs again threatening to stop the work. He refused to pay it, however, when the work was completed and an action was brought to recover it, in which the plaintiff obtained a verdict which was affirmed by the Divisional Court and the Court of Appeal. The Supreme Court held that on the evidence plaintiffs were justified in assuming, from the conversation between McRae & Smeaton, that the standard of quality for the second class masonry was to be that of the Loop Line; that their claim against the defendants was a bonâ fide one and the decision in their favor should be affirmed. Appeal dismissed with costs. Bain Q.C. and Laidlaw Q.C. for the appellants. Osler Q.C. for the respondents.

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