
Foster and Robillard v. Johannsen and Sons Ltd., [1963] S.C.R. 637

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Foster and Robillard v. Johanssen & Sons Ltd., [1963] S.C.R. 637.

The respondent was a construction firm erecting a shopping centre in Eastview for a company of which the appellants were officials. At the material time, construction had progressed to the laying of the roof. The roof was of sheet metal construction. The sheets were hauled to the roof and placed on steel girders to be adjusted in their permanent position. The contract authorized the appellants, as representatives of the owner company, to have access to and inspect the work at all times. The two appellants went up to the roof alone and walked on the butt end of some of the metal sheets that had not been permanently fixed to the girders. The sheets teeter-tottered and both men fell to the ground suffering serious injury. The trial judge found the respondent was liable in tort for negligence and in contract for implied breach of its obligation to provide proper facilities for access at any time, but the damages were reduced on the basis of the appellants' contributory negligence. The Ontario Court of Appeal reversed the judgment, finding that the respondent did not fail in any duty it owed to the appellant.

Hall J. giving the judgment of the Supreme Court dismissed the appeal, affirming the Court of Appeal. He agreed with the trial judge that the doctrine of *volenti non fit injuria* did not apply in this case. But while the appellants had the right of access with proper facilities, in exercising their rights they had to act with reasonable care on their part for their safety. The situation did not involve an unusual danger for these appellants, as some areas of the roof were *obviously* in an unfinished state. They were in no danger until they ventured upon the unfinished area which did not have the appearance of safety, and they should have realized the condition.

R.F.E.