

## **Hoenig v Isaacs [1952] EWCA Civ 6**

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### **Facts**

- Mr Hoenig was contracted to do \$700 worth of decorative work to Isaac's house.
- He did so, but the book case wasn't built effectively
- Isaacs moved in, paid half.
- Bookcase collapsed - \$55 damage
- Isaacs remained there, and refused to pay the other half

### **Held**

- Entire performance was not a condition precedent
- "Even if entire performance was a condition precedent, nevertheless the result would be the same; because I think the condition was waived" Denning
- "If this was an entire contract, then when the plaintiff tendered the work to the defendant as being a fulfilment of the contract, the defendant could have refused to accept it until the defects were made good, in which case he would not have been liable for the balance of the price until they were made good. But he did not refuse to accept the work. On the contrary, he entered into possession of the flat and used the furniture as his own, including the defective items. That was a clear waiver of the condition precedent." Denning
- "I would point out that in these cases the question of quantum meruit only arises when there is a breach or failure of performance which goes to the very root of the matter. On any lump sum contract, if the work is not substantially performed and there has been a failure of performance which goes to the root of it, as, for instance, when the work has only been half done, or is entirely different in kind from that contracted for, then no action will lie for the lump sum."
- It was held that Isaacs freely accepted the work therefore he had to pay
- Also note the trivial nature of the repairs

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