

MEREDITH v. ROMAN CATHOLIC EPISCOPAL CORPORATION OF
OTTAWA—MIDDLETON, J.—DEC. 24.

Architect—Fees for Services in Erection of Building—Breach of Duty—Attempt to Remedy Defect in Construction—Bona Fides—Recovery of Fees—Deduction of Expense Caused by Abortive Attempt—Costs.]—Action by an architect to recover fees for services in connection with the erection of a parish house in the city of Ottawa. The defence was, that the plaintiff had disintitiled himself to recover, and had rendered himself liable to heavy damages by reason of negligence and lack of skill in the construction of the roof of the building. The roof was constructed according to a system, but was not properly constructed. This, the learned Judge finds, was the fault of the contractors, not of the plaintiff; but, when it was ascertained that the roof was a failure, the learned Judge says, it was the duty of the plaintiff to place the whole situation before the defendant. Instead of doing this, the plaintiff improperly assumed to attempt to doctor up the roof, ignoring the defendant's right to insist upon getting what he had contracted for. Without the defendant's consent, he had no right to substitute a botched job for what was called for by the contract. The plaintiff acted in good faith and not without skill, but he involved the defendant in an unjustifiable expenditure. The defendant's agent took the matter into his own hands, removed the roof, and erected another to his own satisfaction. The plaintiff was entitled to his commission, \$1,305.60; but he must pay or indemnify the defendant from the expense of the abortive attempt to patch up the roof. Judgment for the plaintiff for the amount sued for, less \$619.27, unless the plaintiff indemnifies the defendant from liability in respect thereof. As the plaintiff was in one way at fault, and as the defendant made an unsuccessful attack upon the plaintiff, there should be no costs. G. F. Henderson, K.C., for the plaintiff. M. J. Gorman, K.C., for the defendant.