

properly tried out nor the real issues satisfactorily determined, I concur in the order for a new trial, if it is desired.

MEREDITH, J.A.:—It is, I think, much to be regretted that it should be deemed needful to send the parties . . . back to another trial. . . . Perhaps the parties will find it good to come to some settlement between themselves. . . . If the litigation must go on to the bitter end, it may be that it will be deemed advisable to reconstruct the action. . . .

RIDDELL, J.:— . . . As at present advised, I am unable to follow the reasoning which would make the defendant responsible for the negligence of the tenant. . . . But I am not at all satisfied that all the facts are before the Court, and I think that a new trial should be directed. . . .

Moss, C.J.O.:—It is, perhaps, unfortunate that it becomes necessary to send this case back for a further trial. It is, to my mind, very doubtful whether the result will be different; but, as there is to be a new trial, I think it better to follow the rule usually adopted in such a case and make no comment upon the facts.

It would certainly aid materially in arriving at a final conclusion as to the defendant's liability in law if more light was thrown upon that part of the case relating to the employment of and instructions to the architect by whom the plan was prepared and under whose direction the work was done, and his knowledge and means of knowledge of the condition of the walls, as well as his competency.

As the case stands at present, we are left much in the dark with regard to these matters. Although the amount involved in this particular action is not large, the questions involved are important.

I agree, therefore, that there should be a new trial if the defendant desires it—the costs of it and of the former trial to be costs in the cause. The costs of this appeal are already disposed of by the order granting leave to appeal.

If the defendant does not notify his acceptance of the new trial within thirty days, the appeal will stand dismissed. In any case the defendant Reid must pay the costs of the appeal forthwith after taxation.