

GOUINLOCK v. MACLEAN—BRITTON, J.—APRIL 18.

Architect—Work and Services in Erection of Building—Contract—Remuneration—Work Taken out of Architect's Hands during Progress of Work—Recovery on Quantum Meruit Basis—Negligence and Incompetence—Counterclaim—Dismissal—Money Paid into Court—Rule 316—Payment out on Account of Amount of Judgment.—Action for \$2,306.45, a balance alleged to be due for work and services of the plaintiff as architect for a building erected by the defendant. The defendant, without admitting liability, paid \$1,500 into Court, and counterclaimed for damages for incompetence and neglect on the part of the plaintiff. The action and counterclaim were tried without a jury at Toronto. BRITTON, J., in a written judgment, said that in the course of the erection of the building the defendant, becoming dissatisfied, took the superintendence of the work out of the plaintiff's hands. The plaintiff had at first stated that his remuneration would be 5 per cent. of the cost of the building, and the defendant had apparently assented to this. It was contended for the defendant that, as the contract with the architect was for a completed work, and the building was not completed by the architect, there could be no recovery. The learned Judge did not agree with that contention. A great deal of work was done by the plaintiff before the building was taken out of his hands. The plaintiff claimed 5 per cent. on the value of the work done before the building was taken out of his hands and $3\frac{1}{2}$ per cent. on the value of the work done afterwards. The learned Judge was of opinion that the percentage on the latter value should be only $2\frac{1}{2}$ per cent. He ruled that the plaintiff was entitled to recover as on a quantum meruit, and fixed the amount (after deducting payments made before action) at \$1,924.83, for which amount, with interest at 5 per cent. from the date of the commencement of the action, and with costs, he awarded judgment in the plaintiff's favour. As to the counterclaim, the learned Judge said that an architect does not guarantee the work nor the performance of the builders' contracts; and there was not sufficient evidence to warrant the conclusion that the plaintiff was incompetent or negligent. The counterclaim should be dismissed with costs. The defendant being found liable in part and for a greater sum than he had paid into Court, the case fell within Rule 316; and the \$1,500 paid into Court should be paid out to the plaintiff and applied on the amount recovered against the defendant. R. S. Robertson and J. W. Pickup, for the plaintiff. J. W. Bain, K.C., and A. McLean Macdonell, K.C., for the defendant.