

plaintiff's manager at A. on the affidavit on which the motion to set aside pleas was made. The Chambers Judge refused defendant's application.

Held, that the matter was one within the discretion of the judge and that there was no appeal.

D. McNeil, Q.C., for appellant. *W. H. Fulton*, for respondent.

Full Court.]

HUTCHINSON v. CONWAY.

[Dec. 5, 1900.

Architect—Right to commission where work not proceeded with.

Plaintiff was engaged by defendants to prepare plans and specifications of an hotel building to cost not more than \$4000 or \$5000 for which he was to receive a commission of two per cent. on the cost, with one per cent. additional for superintendence. Instructions as to size, number of rooms, etc., were given by defendants. Before the plans were completed changes were made by additions to the original plan, involving an additional expenditure of \$1,500. The plans were approved of by defendants, when completed, and tenders called for, and the work partly proceeded with. It was then found by defendants that owing to an advance in the price of materials the building would cost much more than they had expected, and the work was stopped.

Held, affirming the judgment appealed from, that plaintiff was entitled to recover from defendants the commission agreed upon on the estimated cost of the building.

D. McNeil, Q.C., for appellant. *J. A. Chisholm*, for respondent.

Province of New Brunswick.

SUPREME COURT.

En Banc] SHARPE v. SCHOOL TRUSTEES, DISTRICT No. 6. [Nov. 29, 1900.

Offer to suffer judgment by default—Trial before expiration of ten days from date of filing offer—Costs.

In an action for false imprisonment defendants seven days before trial made an offer to suffer judgment by default for \$75.00. Plaintiff went down to trial and recovered verdict for precisely the amount of offer.

Held, on motion to review taxation of plaintiff's costs, GREGORY, J., dissenting, that the offer, not having been filed in time to give the plaintiff ten days before the trial in which to make her option, the defendants were not entitled under s. 184 of the Supreme Court Act, to judgment against the plaintiff for costs incurred by them after the date of such offer, but on the contrary the plaintiff was entitled to full costs of suit. Rule discharged.

C. N. Skinner, Q.C., for plaintiff. *F. B. Carvell*, for defendant.