

reason of the mode of construction, even if it was defective, the owner being entitled to rely on the skill of competent architects and builders.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, MEREDITH, JJ.A.

J. Lorn McDougall, Ottawa, for plaintiff.

C. A. Moss, for defendants.

MEREDITH, J.A.:—To entitle plaintiff to judgment in this action, it was necessary for her to prove that defendants were guilty of actionable negligence towards the man who was killed—the breach of some duty which they owed to him—and that such negligence was the real cause of his death. It is enough to say that both of these things have not, if either of them has, been proved. . . . The wall fell in a squall of a very unusual and extraordinary character—of very unusual, concentrated, energy. The building was in an unfinished state, still under construction; among other things, the openings for windows and doors were not yet filled in, giving much greater scope to the destructive power of the storm.

After the best consideration I have been able to give to the case, I am unable to find that actionable negligence has been proved—that the onus of proof in this respect has been satisfied; and, if it had, I would be unable to find that any such negligence, and not the effect of an extraordinary wind storm upon a new building in an unfinished state, was the proximate cause of the injury.

After the findings of the trial Judge and of the Divisional Court against plaintiff on these pure questions of fact, one should need to be very clearly of a contrary opinion before giving effect to this appeal; to the contrary of that, I would have reached the conclusions which I have expressed upon these questions if there had been no prior findings upon such questions.

Appeal dismissed, and with costs if demanded.

OSLER, J.A., gave reasons in writing for the same conclusion.

MOSS, C.J.O., GARROW and MACLAREN, JJ.A., also concurred.