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No. 26.

COURT OF APPEAL.

MARCH 14TH, 1911.

* EARL v. REID.

Negligence—Collapse of Building—Injury to Person in Neighbouring Building—Finding of Jury—Independent Contractor—Duty and Responsibility of Owner—Evidence—New Trial—Costs.

Appeal by the defendant Reid from the order of a Divisional Court, 21 O.L.R. 545, 1 O.W.N. 1067, affirming the judgment of LATCHFORD, J., at the trial, in favour of the plaintiff, upon the findings of a jury. Leave to appeal to the Court of Appeal was granted by MACLAREN, J.A. (1 O.W.N. 1101), upon the appellant undertaking to pay the costs of the appeal in any event. The action was for damages for injury sustained by the plaintiff by the collapse of the defendant Reid's building, the plaintiff being in a neighbouring building when the collapse occurred.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, J.J.A., and RIDDELL, J.

Sir G. C. Gibbons, K.C., and G. S. Gibbons, for the appellant. J. F. Faulds and P. H. Bartlett, for the plaintiff.

GARROW, J.A.:—The facts appear to me . . . to have been very imperfectly developed. The architect was not called nor other expert evidence given to account for the disaster. All that was really proved as to it was that the wall was removed and pillars substituted, and then, in a few days, the collapse.

Much was said at the trial, and again before us, by counsel for the plaintiff about the alleged weakening of the wall by the arches, and yet not a witness was called to prove that the wall broke down because of that, or even that an arch was found broken down after the accident in such a way as to indicate

*To be reported in the Ontario Law Reports.