instead of which the delay in this instance is from the date of the judgment. Why has the rule been departed from? If ever there was a case in which this rule ought to have been followed, it was this case; for it appears that the protest or notice calling upon the defendant to furnish the fencing was served upon the 20th of April, and the summons in the present suit was served on the 24th of April, only four days after. Now comes another point. Suppose the judgment of the court below is to be executed; the fifteen days are out, and consequently the respondent is authorized to build the fences at the expense of the Appellant. Supposing this to be done, in what way is the respondent to be paid? The judgment can be carried out only by another action, setting out that whereas on such a day and year he obtained a judgment authorizing him to build the fences at the expense of the Appellant, he is entitled to be reimbursed. How is the cost to be ascertained otherwise? Why did not the judgment order the thing to be done *à dire d'experts*, and thus obviate the necessity for another action? It thus appears that there were two mistakes in the judgment: first, in not stating that the work was to be done within fifteen days from the signification, instead of from the date of the judgment; and, secondly, in not stating that the work was to be done *à dire d'experts*. I therefore think that the judgment should be reversed.

MEREDITH, J. This case was first argued in my absence, and the Court was equally divided. I am of opinion that the judgment is unobjectionable, and that it should be confirmed. The first objection to the judgment is that the delay therein given to the defendant counts from the date of the judgment, and not from the signification. But both parties were before the Court, and the Court granted what it conceived to be a reasonable delay. There was not the slightest injustice to either of the parties in this. Then again, as to the cost of procuring the timber, how was the Court to know what it would cost? The value might increase or decrease according to the state of the market. The judgment simply said to the plaintiff, you may get the materials for making the fence, and then you may demand the cost from the other party. It will be defendant's own fault, if he renders another action necessary, by failing to pay the cost of the material for the fence. The costs must be taxed as in an appealable case of the lowest class, since both parties have proceeded as in an appealable case. No declinatory exception was filed, and the case proceeded to judgment as an appealable case. The costs will therefore be awarded as of the lowest class of appealable cases.

DUVAL, C. J., and DRUMMOND, J., concurred.

Judgment confirmed; AYLWIN and MONDELET, JJ. dissenting.

Doutre & Doutre, for the Appellant.

Dorion & Dorion, for the Respondent.

FAHRLAND, (plaintiff in the Court below,) Appellant; and RODIER, (defendant in the Court below,) Respondent.

Architect—Violation of Contract.

Held, that an architect who, having agreed with the proprietor to superintend the erection of a house, subsequently engages with the contractor to watch over the contractor's interests for a pecuniary consideration, is thereby guilty of a direct violation of his agreement with the proprietor, and cannot recover under such agreement.

This was an appeal from a judgment of the Circuit Court at Montreal, rendered by *Berthelot*, J., on the 26th of September, 1865, dismissing the plaintiff's action. The facts were these:—The plaintiff, Theophile Fahrland, an architect, was engaged by Charles S. Rodier, the defendant, to superintend the erection of a house in St. Antoine Street west, in the city of Montreal, and it was stipulated that he was to receive $100 for his services. It appeared from the evidence that sometime after the erection of the building commenced, the plaintiff obtained from the contractor, Mr. Payette, a promise of $80 for looking after the contractor's interests. The defendant being apprised of this fact, dismissed the plaintiff, and refused to pay him anything for his services. The latter then brought the present action for $100, the amount for which he undertook to superintend the erection of the defendant's house.

The plea was that the plaintiff had violated