

denying the plaintiff's allegations, counterclaimed to recover his commission. MIDDLETON, J., said that most of the specific claims put forward by the plaintiffs were negated by the evidence at the trial; and all the claims were very much exaggerated; yet, in the result, he thought that there was some negligence on the part of the defendant. The two matters in which the defendant was to blame were: allowing the building to be so erected that the eave overlapped the eave of the adjoining building, also owned by the defendant; and his failure to compel the carpenters to use flooring in accordance with the specifications. It was said that the overlapping of the eaves would interfere with the selling value of the premises. This claim was very much exaggerated. The fact that the overlapping eave keeps the 18 inches of space between the houses dry and prevents the walls becoming wet and so injured, was not to be overlooked. The plaintiffs stood by and did not in any way complain of this when the building was located; and, while some allowance should be made upon this head, it should not be large. As to the flooring, the specifications called for flooring not exceeding 4-1/2 inches in width. About 30 per cent, of that actually laid down was 5-1/2 inches in width. This rendered the floor boards more liable to warp and to leave wider cracks in shrinking. The architect was to be allowed 5 per cent. commission upon the erection, or \$200 in all; and he had received \$50. The learned Judge said that, after giving the matter the best consideration he could, and having in view the exaggerated claims originally made—some of which were pressed at the trial—he had arrived at the conclusion that the best solution of the matter was, to direct the defendant to refund the \$50 and to set off the plaintiffs' claim for damages against the defendant's claim for commission—in other words, to assess the damages at \$200, the amount which would be payable for commission. No costs. J. J. O'Meara, K.C., for the plaintiffs. T. A. Beament, K.C., for the defendant.
