

This judgment will, therefore, not be operative for 60 days, so as to allow the suggested proceedings to be taken.

The defendant is, I think, entitled to his costs.

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HON. MR. JUSTICE MIDDLETON.

JUNE 25TH, 1912.

McDONALD v. EDEY.

3 O. W. N. 1514.

*Architect—Negligence—Damages—Counterclaim for Commission.*

Action by plaintiff for \$2,500 damages, for negligence of defendant, an architect, in supervising the erection of a building. Defendant counterclaimed for \$200 commission.

MIDDLETON, J., found plaintiff entitled to \$200 damages, which he set-off against defendant's commission. No costs to either party.

Plaintiffs claimed that defendant, who was employed by them as an architect, in the erection of a house on Spadina avenue, Ottawa, was liable for damages by reason of his careless, negligent, and unskillful conduct in and about the building in question. The damages claimed were \$2,500. Defendant denied this, and counterclaimed to recover his commission.

J. J. O'Meara, K.C., for the plaintiffs.

T. A. Beament, K.C., for the defendant.

HON. MR. JUSTICE MIDDLETON:—Most of the specific claims put forward by the plaintiffs were negated by the evidence at the trial. All claims were very much exaggerated. Yet in the result, I think that there was some negligence on the part of the defendant.

The two matters in which I think he was to blame are allowing the building to be so erected that the eave overlaps 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 is said that the overlapping of the eaves will interfere with the selling value of the premises. I think this claim is very much exaggerated. The fact that the over-