

moneys due for work done for defendant upon a theatre in Hamilton under a contract with the Fuller Claffin Theatre Building Company of New York. The aggregate amount of the work was not to exceed \$22,500. Ultimately the building cost \$34,000. Riddell, J., allowed the Fuller Claffin Co. \$450 and \$500 for extra services, the plaintiff Righetti \$600, the Roeser & Sumner Co. \$218.50, and plaintiff Mills \$45.28.

J. L. Counsell, Hamilton, for defendant, contended that some of these sums should not have been allowed.

H. H. Bicknell, Hamilton, for plaintiffs, contra.

THE COURT (MEREDITH, C.J., MACMAHON, J., MAGEE, J.), dismissed the appeal with costs, without prejudice to any action which may be brought by plaintiff to recover damages for breach of alleged covenant that building would be completed for \$22,500. Execution in this action for claim of company of \$950 to be stayed for 6 months to enable defendant to set off his claim.
