showed that he then said to Herrold, "I am very pleased, because it happens that I have shares in the Soltar Company."

In cross-examination, he said he never suggested any material for the flat roof but left the choice to Herrold. As a guarantee had been given by the company he felt that he was safe in using Soltar.

The plaintiff Herrold's account of the matter was that the question of roof coverings was discussed; concrete, lead or re-inforced malthoid were too costly, in view of the amount of money Ross wished to spend on the house. Ross then said,

"What about Soltar?"

Herrold's reply was that he knew nothing about Soltar but would make enquiry from the managing director of the company. He did so and got a written guarantee from the company. Afterwards he told Ross, and Ross said, "I am glad Soltar is to be used as I am Soltar."

The letter from the Soltar Co. to Herrold was signed by the managing director, Mr. Friend, and the material portion of it read as follows: —

"We are perfectly satisfied that you will have no trouble at all in regard to the Soltar running through the joints in the boarding and although we have never done work on a flat roof, we have done such satisfactory work in a great many other instances that we feel sure there is no risk of us making otherwise than a success of your building."

In evidence Friend had said that Ross told him Herrold was thinking of putting Soltar on the roof and asked witness what he thought of it. Friend's reply was the company had never done it before but there was no reason why it should not be a success. This conversation was not admitted by Ross.

In due course Soltar was put on the roof by the Soltar Co.'s expert. It was not a success and, after a time, the tar found its way through the joints and caused damage which the defendant had to incur expenses in remedying.

"In determining what I may term the first branch of the case or the counter-claim," said Judge Cooper," the principle to be applied is that the onus of proof admittedly rests on Mr. Ross. The three witnesses—plaintiff, defendant, and Mr. Friend are all of high reputation and the question is whether in the face of the plaintiff's and Mr. Friend's evidence I can assume that the defendant's account is necessarily correct. All the witnesses are speaking of what occurred in conversations nearly two years ago. I believe each witness to have given honestly his recollection of the conversation. I have come to the conclusion, weighing the evidence as a jury would, that Mr. Herrold's account is at least as reasonable as that given by Mr. Ross. The evidence does show that Mr. Ross desired to keep the cost of the building as far as possible within certain limits. His original intention was to spend £800 on the building but the contract price exceeded that amount. It is clear that he did not desire that the more costly form of covering, such as concrete or re-inforced malthoid should be used and I think that Mr. Herrold's evidence supported as it is by the guarantee, and by Mr. Friend's testimony justifies me in concluding that the suggestion that Soltar should be used came in the first instance from Mr. Ross, who was admittedly a shareholder in the Soltar Company and not from Herrold, and that Herrold informed Ross that he (Herrold) had no personal knowledge of the efficiency of Soltar, and that, if the company was prepared to give a guarantee, Mr. Ross was willing to take the risk of Soltar being used. I am therefore, unable to hold that Mr. Ross has established negligence, or breach of duty or contract, on the part of Herrold in specifying Soltar as the covering for the roof.

What may be termed the second branch of the case on the counterclaim may be stated thus. It is submitted that Mr. Herrold, under any circumstances, ought to have specified that some impervious material should have been used as a covering to the roof before the application of Soltar, that he did not do so, and that this omission was the real cause of the leakage of the tar through the roof.

Architects, like other professional men, are bound to possess a reasonable amount of care and diligence in the carrying out of the work which they undertake, including the preparation of plans and specifications. The question whether an architect or engineer has used a reasonable and proper amount of skill is one of fact, and appears to rest on the consideration whether other persons exercising the same profession, and being men of experience and skill therein, would or would not have acted in the same way as the architect in question: but he is not necessarily liable for a mere error of judgment: Halsbury's Laws of England, Vol. 3, pp. 292, 295. There is a case of *Turner v. Garland and Christopher* reported in Hudson on Building Contracts 4th edn., Vol. 2, p. 1, which is very like the present case. The defendants were architects employed by the plaintiff to prepare plans and specifications for a model boardinghouse. The plaintiff instructed them to put in a new patent concrete roofing, which cost only a quarter of what a lead or slate roof would have cost. The concrete roof proved a failure, let in water, and had to be removed and replaced, and the plaintiff sued the architect for negligence. Erle J. directed the jury that though failure in an ordinary building was evidence of want of competent skill, yet, if the new roof was out of the ordinary course, and a novel thing to the architect, about which he had little or no experience, failure was not, necessarily, evidence of negligence. Now, in the present case, I have already held that the balance of evidence indicates that Soltar was used at the request of Mr. Ross, and it is clear that he read and approved of the specifications which contained the clause that the Soltar Company were to cover the roof with Soltar. In my opinion, also, the guarantee and its terms were known at the time to Mr. Ross, and he knew that Mr. Herrold had had no experience in the application of Soltar, and that the Soltar Company employed their expert specialist to do the work. Applying then the principle, which, in my opinion is well established, namely, whether other persons, exercising the same profession, and being men of