

was said, the appellant when beginning his work was misled by stakes which had been planted by the engineer of the respondent company, and which the appellant assumed were intended to indicate the position which the building was to occupy. In this attempt the appellant failed at the trial; and we see no reason for differing from the conclusion of the learned trial Judge as to it.

It was also contended that, as the respondent company had gone on with the erection of the superstructure upon the foundation which the appellant had constructed, instead of requiring him to rectify the mistake, as he contended he could have done at a comparatively small expense, the respondent company was now not entitled to rely upon the departure from the terms of the contract which the mistake involved.

This contention also failed at the trial, and rightly so, we think. What was done by the respondent company was really in ease of the appellant; and the proper conclusion upon the evidence is, that the appellant was informed that, while the respondent company would not insist upon the foundation walls being rebuilt, there would be deducted from the contract-price of his work the amount of any additional expense the respondent company should be put to in connection with the work the other contractors were to do, and that the appellant assented, or at least did not object, to that course being taken.

No case was made, on the pleadings or at the trial, of collusion between the respondents so as to dispense with the necessity of the production of the architect's certificate, if, by the terms of the contract, the production of it was a condition precedent to the right of the appellant to claim payment for his work.

The appellant is not, in our opinion, entitled to recover, even if the production of the architect's certificate is not a condition precedent to his right to be paid. It was by the contract a condition precedent to the right of the appellant to be paid the contract-price that the covenants, conditions, and agreements of the contract should have been in all things strictly kept and performed by him, and that the work should have been done conformably to the plans, specifications, and details prepared by the architect and in all things to his entire satisfaction, and neither of these conditions has been performed by him.

It is open to grave question whether the production by the appellant of the architect's certificate is necessary. The provision of the contract as to this is incomplete. The words "as in the conditions provided" qualify the preceding words "but