I shall overlook it," or "I shall deduct so much from your price." The contract is, that the work shall be done in accordance with it to his satisfaction, not to his indulgence, and the performance should be proved by some one who can prove it. There was, therefore, here, I think, a failure of proof on the part of the plaintiffs as to the performance of the contract itself.

But as to the extras claimed and deductions, the contract shews that the architect's is not the final word. Clause "sixth" provides that, should any dispute arise as to the value of any claim for extras or deductions after the architect has given his final certificate in writing on the completion of the contract, the same shall be referred to arbitration. The parties have not here chosen to seek arbitration, but the dispute exists, and . . . they are entitled to have it properly tried.

Another matter to be referred to is, that part of the plaintiffs' claim is on a progress certificate for $200. It is expressly declared that such certificates in no way lessen the total and final responsibility of the contractor nor exempt him from liability to replace work if it be afterwards discovered to have been badly done or not according to the drawings and specifications either in execution or materials. That, of course, does not touch the question of his exemption after a final certificate, but when we find that the final certificate is not itself necessary nor conclusive, the provision I have alluded to goes to shew that thorough performance of the work was what the parties had in mind, and the contractors were not to escape through temporary non-discovery of inferior work.

On the whole, I think the case should go back for trial, not merely on account of the failure of proof on the part of the plaintiffs, but also on account of the refusal to allow the defendant to prove, if he can, wherein the contract has not been performed, either according to its terms or as varied according to its terms. The costs of the former appeal should be to the defendant. The costs of the former trial should be dealt with by the Judge at the new trial.

MOSS, C.J.O., GARROW and MACLAREN, JJ.A., concurred.

MEREDITH, J.A., was of opinion, for reasons stated in writing, that paragraph 5 of the contract applied; that the architect, acting under that paragraph, was an arbitrator; that no award had been made; and that the appeal should stand over until such an award should be made.