

of opinion that the debentures were wholly ultra vires and null and void, but the Court of Appeal (Williams, Romer, and Cozens-Hardy, L.JJ.) came to the conclusion that they were not wholly void, but were valid and binding on the several companies to the extent to which the money advanced on them had come to the hands of each company. The articles of association empowered the directors to borrow any sum of money not exceeding the amount of the preference share capital of the company. No preference share capital had in fact been issued, and the Court of Appeal held that this clause did not limit the amount that could be borrowed.

BUILDING CONTRACT—ARCHITECT'S CERTIFICATE—CERTIFICATE NOT TO BE CONCLUSIVE AS TO SUFFICIENCY OF WORK OR MATERIALS—DEFECTIVE WORK—MATERIALS—DAMAGES.

Robins v. Goddard (1904) 2 Ch. 261, was an action brought by builders under a building contract clause 16 of which empowered the architect to order in writing from time to time the removal of improper materials, the substitution of proper materials, and the removal and proper re-execution of any work not in accordance with the drawings and specifications. Clause 17 provided that any defect which might appear within twelve months from the completion of the work arising, in the opinion of the architect, from materials or workmanship not in accordance with the drawings and specifications should, upon the written direction of the architect, be made good by the contractor at his own cost, unless the architect should decide that he ought to be paid for the same. Clause 30 provided for payment of the contractor under progress certificates, to be issued by the architect, and contained the proviso: "No certificate shall be considered conclusive evidence as to the sufficiency of any work or materials to which it relates, nor shall it relieve the contractor from his liability to make good all defects, as provided by this contract." The architect had issued certificates for the sum claimed by the plaintiffs, and had made no order or direction under clauses 16 and 17. The defendant, nevertheless, claimed that he was entitled to set off damages he had sustained by reason of defective work and materials, and that the architect's certificates were not conclusive. Farwell, J., however, held that in the absence of any order or direction by the architect under clauses 16 and 17 the architect's certificates were conclusive, and that the defendant was not entitled to set off the damages he claimed.