

the contractor. Certain additional work was ordered to complete which necessarily delayed the work beyond the time set. It was held that the contractor in such a case is exonerated from the liability to pay liquidated damages unless by the terms of the contract he has agreed that whatever additional work may be ordered, he will, nevertheless, complete the works within the time originally limited.

And this is so even if the contract contain a clause giving the architect power to extend the time for completion in case of extras being ordered "if by reason thereof he shall consider it necessary to extend the time for the completion of the tug-vessels, such extension of time shall be given in writing . . . otherwise the time of completion shall be deemed to be not extended . . ."

In *Westwood v. Secretary of State* (1863), 7 L. T. N. S. 736, in a contract containing this clause (see p. 737), the engineer did not extend the time, but the Court (Wightman, Crompton, and Mellor, JJ.), held nevertheless, that the defendant having by his own act rendered it impossible to perform the work in time, the builder was relieved.

In the report in 11 W. R. 261, it is said, p. 262: "The Court . . . expressed so strong an opinion that the set-off for penalties could not be supported that the argument on that head was not pressed."

A not dissimilar case is *Roberts v. Bury Commissioners, etc.* (1869), L. R. 4 C. P. 755 (1870), L. R. 5 C. P. 310, in which Kelly, C.B., giving the judgment of himself and Blackburn and Mellor, JJ., says, (L. R. 5 C. P., pp. 326, 327): "Where the effect of giving such a construction to the contract would apparently be to put one party completely at the mercy of the other we ought not to give that construction to the contract unless the intention is pretty clearly expressed."

*Jones v. S. John's College* (1870), L. R. 6 Q. B. 115, is a different kind of case. There, as is pointed out by Mellor, J., at p. 123, "there is an express provision made in the contract for an extension of time in case the clerk of the works shall consider it necessary, but the contractors contract positively and absolutely to do the work and the alterations within the given time unless an extension be made under that particular stipulation;" and in the face of that stipulation the Court held that they could not imply a condition at variance with it. *Expressum facit cessare tacitum.*