

I think the appeal ought to be allowed and the verdict for \$125 restored with costs here and below.

Bowlby & Clement, Berlin, solicitors for plaintiff.

Millar & Sims, Berlin, solicitors for defendants.

BOYD, C.

JUNE 12TH, 1902.

TRIAL.

ANDERSON v. CHANDLER.

*Contract—Breach—Dismissal of Contractor—Architect's Notice of
—Time—Sunday.*

Action tried at Toronto, brought to recover damages for breach of contract for erection of a mausoleum and for work done and materials provided therefor.

G. T. Blackstock, K.C., W. R. Riddell, K.C., and A. Fasken, for plaintiff.

D. E. Thomson, K.C., and W. N. Tilley, for defendants Chandler.

H. L. Drayton, for defendant Gibson.

BOYD, C.:—The notice given to plaintiff by the architect under clause 25 of the conditions of the contract and mailed 23rd November, 1899, advising plaintiff that, unless he "proceeded satisfactorily with the work within 72 hours after mailing of the letter," the architect would certify the facts to the owner, was lacking in the element of specific objection, and does not indicate in what respect the work was to be prosecuted. The 23rd November, 1899, was a Thursday, and we have not the precise hour of mailing given; but in any event the last hour of the 72 would fall on Sunday. Should this *dies non* be counted against the contractor and in favour of a forfeiture? *Brown v. Johnson*, Car. & M. 444; *Sadler v. Barber*, 20 Wend. 207; *Wharton on Contracts*, vol. 2, sec. 897. There was unquestionably an application made on 27th November, if not before, and an attempt to remove undressed stones for the purpose of fitting them for the structure. But, apart from this, work of a substantial kind was being prosecuted in pursuance of the contract in the yard of the plaintiff, of which the architect took no notice, and of which he was not aware when he gave his notice and certificate; and therefore the stoppage of the work was not justifiable, and the plaintiff is entitled to \$650 in respect of it. Improper charges of fraud were made against the architect and not substantiated, and against him the action is dismissed with costs. Judgment for plaintiff without costs for \$650, with lien on the lot in question.