

The contract is dated the 10th May, 1912, and provides that the work shall be done conformably to the plans, specifications, and details prepared by the respondent Herbert, who was the architect of the building, and that it shall be done "in all things to the entire satisfaction of the architect."

The provision as to payment for the work is made subject to the condition that the covenants, conditions, and agreements of the contract have been in all things strictly kept and performed by the appellant; and the contract also provides that no payment shall be made without the production of the architect's certificate "as in the conditions provided."

The contract contains no other provision as to the architect's certificate; and no other document was adduced providing that the production of it should be a condition precedent to the right of the appellant to claim payment.

The appellant has been unable to obtain the certificate of the architect; and in his statement of claim—presumably because the production of the certificate was, in the opinion of the pleader, a condition precedent to the right of the appellant to claim payment, and to get rid of the supposed effect of that condition—it is alleged that the appellant performed the work and supplied the material as provided by the contract, and that, "after all necessary times had elapsed," he requested the respondent Herbert "to issue to him the usual certificate to enable him to receive his payment from the defendants Marsh and Henthorn Limited (the respondent company), but the said defendant Herbert refused to grant the said certificate and still refuses to grant the same, with the knowledge of his co-defendants Marsh and Henthorn Limited, and the said Marsh and Henthorn Limited, although requested by the plaintiff to pay him the amount of the said contract-price, refused and still refuse to do so."

The reason for the refusal of the architect to give the certificate was due to the fact that the appellant had so laid out one of the buildings and done the concrete work that the walls of the foundation were so placed that it was not, and the building to be erected on it would not, have been, as they were designed and shewn on the plans and drawings to be, rectangular in form, which necessitated a change in the structural steel work for the building, and other changes, which involved considerable additional expense to the respondent company.

It was sought by the appellant to throw the responsibility for this mistake on the respondent company, because, as it