

Apart from that, however, the certificate is not conclusive. Payment on any certificate is not, by the terms of the specifications, to exonerate the contractor from liability for any defect attributable to bad material or bad workmanship. The Referee found that the material was bad and the work improperly done. If payment of the amount of a certificate forms no bar to the contractor's liability, then, *à fortiori*, the giving of the certificate can put the matter in no better position.

But it is unnecessary to consider this point further, for the report charges the architect with improperly issuing this certificate, and the Referee's later finding states that both the appellant and the architect knew, when the certificate was given, that there was nothing due from the owner: a clear case of fraudulent collusion.

It may be noted that in *Hickman v. Roberts*, [1913] A.C. 229, the House of Lords has decided that improper interference by a contractor with the architect, in forbidding him to issue a certificate, was sufficient in itself to shew that the architect had abandoned his attitude of impartiality, and that the obtaining of his certificate was therefore not a condition precedent to recovery of the amount properly due.

I have not considered whether the contract limits the appellant to his commission of 10 per cent. on the cost of erection, and does not go far enough to enable him to demand and receive the cost itself in the way indicated in the specifications.

The appeal should be dismissed with costs, which, however, are not to include the cost of procuring the evidence, in view of the application of the appellant, when launching his appeal, to dispense with it, on the ground that he proposed to argue the case wholly upon the findings of the Referee: a course which he scrupulously pursued.

JANUARY 29TH, 1915.

MILLAR v. PATTERSON.

Assessment and Taxes—Tax Sale—Action to Set aside Sale Made for two Years' Taxes in Arrear—No Arrears for one Year—Validity of Assessment—Irregularity—Validating Enactment—Assessment Act, 4 Edw. VII. ch. 23, sec. 22, sub-sec. (1) (d), sec. 172—Costs—Successful Appeal.

Appeal by the defendant from the judgment of the Senior Judge of the District Court of the District of Algoma, in favour of the plaintiffs, in an action to set aside a sale of land for taxes.