

though 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 was said, the appellant when beginning his work was misled by stakes which had been planted by the engineer of the respondent company and which the appellant assumed were intended to indicate the position which the building was to occupy. In this attempt the appellant failed at the trial; and we see no reason for differing from the conclusion of the learned trial Judge as to it.

It was also contended that as the respondent company had gone on with the erection of the superstructure upon the foundation which the appellant had constructed, instead of requiring him to rectify the mistake as he contended he could have done at a comparatively small expense, the respondent company was now not entitled to rely upon the departure from the terms of the contract which the mistake involved.

This contention also failed at the trial, and rightly so, we think. What was done by the respondent company was really in ease of the appellant; and the proper conclusion upon the evidence is that the appellant was informed that while the respondent company would not insist upon the foundation walls being rebuilt there would be deducted from the contract price of his work the amount of any additional expense the respondent company should be put to in connection with the work the other contractors were to do, and that the appellant assented, or at least did not object to that course being taken.

No case was made on the pleadings or at the trial of collusion between the respondents so as to dispense with the necessity of the production of the architect's certificate, if, by the terms of the contract, the production of it was a con-