

On 21st October, 1904, the architect issued his final certificate for the balance of the \$2,050, adding: "Your indemnity claim by reason of detention will have to be adjusted by the Board of Control, as that is something that does not come under my duties to adjust."

The foregoing references to the evidence shew that this case differs materially from *Bush v. Trustees of Whitehaven* (supra). There the work was begun within the time provided by the contract, but the action of defendants prevented its completion within the time agreed upon; the contractors nevertheless continued the work, without objection from the other party to the contract, and it was held that, the conditions having materially changed, both parties must be regarded as allowing the work to go on under the altered conditions, and as giving to the contractors a claim in respect of the increased cost because of the delay. But that is not the present case. Here, because of defendants' default (plaintiff not having been able to commence his work within the time provided for its completion), he had the right to treat the contract as at an end, and if the defendants were guilty of a breach, his remedy was an action for damages. He did nothing, however, until called upon by the architect to perform the work. Thereupon he advanced a claim for the additional sum in question. This defendants did not assent to, and plaintiff was notified by the architect that he must proceed under the contract. This he did. He was not obliged to have done so, but, having done so, he cannot now take the attitude that the terms of the contract (except as to time) do not determine the rights of both parties. Before beginning the work, plaintiff having raised the question of an increased price, and defendants through their architect having refused to entertain the demand, and having notified plaintiff that if he would not perform the work at the price named in the original contract, it would be given to others, the inference is, I think, that in order to retain the work, plaintiff elected to abandon his claim and to execute the work at the price named in the original contract. But for so doing, he would have lost any advantage from performing the work, and have been left to whatever legal rights he was entitled to, because of defendants' default. The terms of the contract having by the conduct of the parties been made applicable to the belated work, and plaintiff having for valuable consideration