

E. Guss Porter, K.C., for appellant.

W. S. Morden, K.C., for respondent company.

W. N. Tilley, for respondent Herbert.

HON. SIR WM. MEREDITH, C.J.O.:—The action is brought to recover the contract price for “the excavating, erection of wooden forms and concrete work and supplying the materials therefor for a foundry building” for the respondent company, and the value of extra work done and materials provided by the appellant in connection with the building.

The contract is dated 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 the 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 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, al-