

The parties had stipulated that the work was to be done to the satisfaction of the architects, and, thus having made the right to payment dependent on their approval, plaintiffs could not recover until such approval was given: *Dobson v. Hudson*, 1 C. B. N. S. 659; *Morgan v. Bernie*, 9 Bing. 672; *Coatsworth v. City of Toronto*, 10 C. P. 73.

It was, therefore, for the architects to determine whether plaintiffs had performed their contract. Whitham recognized this as the legal position of the matter on 20th July, when, on receipt of the letter of that date from the architects, complaining of the unsatisfactory condition of the work, he sent it to plaintiffs, and also telephoned them on the subject, and again on 1st August called their attention to the architects' complaint. Further, when, in compliance with the architects' demands, plaintiffs sent Daniels to Brantford, Whitham was with the architect Spiers when the latter instructed Daniels what to do, and not until after the work of Daniels on 3rd and 4th August were the architects satisfied.

As against the effect of this work in extending the time for registering a claim for lien, *Neil v. Carroll*, 28 Gr. 30, was cited in support of the contention that where a contract has been substantially performed, some trifling work in the way of removing defects would not extend the time, but in that case it was not, as here, left to a third person to determine whether, and if so when, the contract was completed. That question, by the express agreement of the parties in the present instance, is withheld from the jurisdiction of the Court, and left to the architects. They, therefore, and not the Court, are the judges of the materiality of any alleged shortcomings of plaintiffs in the performance of the contract. Until after the work of 4th August they were not satisfied, and I therefore am of opinion that the time for filing plaintiffs' lien had not expired on 24th June, and that they are entitled to judgment accordingly, with costs up to judgment, and to payment of whatever may be found due them by the Master.

It was stated at the trial that under the statute defendants had paid a sum of money into Court in discharge of the registered lien. This fund will be applicable towards meeting whatever amount may be found due to plaintiffs.

The case will be referred to the Master in Ordinary to take the account between the parties, to make all necessary directions, and to determine the costs of the reference.