A Building Dispute

A Supreme Court Judgment

A judgment of interest to builders was delivered by Mr. Justice Hosking, says the Auckland "Star" of November 23. The case was stated by arbitrators for the opinion of the Court on certain questions arising out of a building contract for the erection of an apartment house in Lower Symonds Street by Frederick Joseph Herring Ellisdon (Dr. Bamford) for Rachael Basten (Mr. McVeagh). A penalty clause was attached to the contract, providing for the payment by the contractor of £10 per week for every week the contract remained uncompleted beyond the time specified or within any extended time which may have been allowed by the architect. The contract provided that the contractor should be allowed an extension of time in all cases where the completion of the work was delayed by inclement weather, strikes, or authorized extra additions or alterations known as extras. The extension of time to be allowed was to be agreed upon by the contractor and architect. The question to be decided was whether the authorization of a number of extra works in connection with a contract set at large or waived the penalty clause for the non-completion of the works in the period specified in the contract. When the contractor forwarded his account to Mrs. Basten for the recovery of the balance of the contract money, Mrs. Basten lodged a claim for a sum of £110 damages for non-completion of the contract within the time specified. In the dispute before the arbitrators, the contractor argued that by virtue of the fact that extras had been ordered, an extension should have been allowed. As no extension of time was granted, he submitted that the penalty clause should be waived or set aside. His Honor, in the course of his judgment, said he was of the opinion that the provision for the penalty clause was applicable, notwithstanding the fact that no extension of time was fixed when the order for the extras was given. An incidental question asked in relation to the case was what is the meaning of the expression in clause 22—"the works shown in the plans and specifications?" The suggestion was that this clause was not applicable if there were extras, because if there were, the works whose non-completion was to bring the clause into operation, were not the works shown on the plans and specifications. His Honor said he did not think this suggestion could be upheld, otherwise the provision for extension in the case of extras would become migratory. The contractor agreed to execute the contract, subject to the general conditions of contract, the works shown on the drawings and described in the specifications, but Clause II. of those conditions gave power to vary the contract by ordering extras, so that the works shown on the plans and specifications were subject to this power of variation. Had there been no provision for extension, then, according to the decisions these variations, if they caused delay, would, although they were authorized by the contract, set aside the penalty clause. Here, however, provision for extension had been made as indicated. Therefore it did not appear to his Honor that the expression in question precluded the application of Clause 22, although extras had been ordered. It should be carefully noted, he said, that it was not because extras were ordered that an extension was to be allowed. That was only to happen if the extras were such as to cause delay in the completion of the works.

The Modern Gospel of Good Work

From the "Architects' and Builders' Journal"

The Design and Industries Association, whose special aim is to bring about a better standard of taste in all things of common usage by drawing together the producer, the distributor, and the consumer, have issued a fourth pamphlet, written by Mr. Clutton Brock, who, with great directness and vivacity sets forth his creed of work. The following are some interesting passages relating to the taste of the general public and those who control it:—

Beauty to most people consists, not in design, but in what they call "style"; and style changes as quickly as fashion in dress. Thus, people get a notion that high finish is inartistic, as it is when it is finish for the sake of finish; they suppose that there is some mysterious virtue in the roughness of peasant art; and they will buy objects in which this roughness is imitated for commercial purposes, objects that are merely badly made. . . .

Good design and good workmanship produce beauty in all objects of use. That is the common sense of the matter. But human beings never attain to common sense unless they aim at something beyond it. There must be a kind of religion of workmanship, if workmanship is to be good; and a religion of design, if there is to be good design. It never is good unless both designer and workman do their best for the sake of doing it. What we need most in England now is this religion; and we need a condition of things, a relation of all the parties concerned, in which it will be possible to do good work for the sake of doing it. When we have that, we shall have art soon enough. And it is not an impossible or unnatural relation, for it has often existed in the past.

The delight in doing a job well for its own sake is just as natural to man as greed or laziness or fraudulence. There is a natural force in him making for good work, as there is a natural force making for bad. Unfortunately the force making for bad work is helped, at present, in England, by circumstances which can be overcome, and by a body of mistaken opinion which can be refuted. But the circumstances can be overcome only if the opinions are changed. Thus, both manufacturers and shopkeepers often believe that they are utterly at the mercy of the public taste, and that the public taste is quite irrational; the public does not want good design or workmanship; the only way to success is to tempt it with continually changing