

The Irish Builder.

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The Crosshaven Church Building Case.



FROM the extreme south of Ireland comes to us the report of another of these legal duels with which we are becoming unfortunately, too familiar—, a suit at law instituted by a contractor against a Catholic

clergyman, to recover for the value of extra work done in erecting a church at Crosshaven, that charming watering-place near the mouth of Cork harbour. Elsewhere we report as much of the case as our limited space will permit. The plaintiff was Mr. Richard Evans, the well-known and eminent building contractor, of Cork, and the defendant was the Very Rev. Canon M'Swiney, P.P.

It appears that the rev. gentleman, having secured the services of Mr. E. Welby Pugin to design his church, employed Messrs. Gribbon and Cleere, surveyors, of Dublin, to prepare the bill of quantities. There was no specification, but the description of the work was given in notes on the drawings. The quantities were issued by defendant to intending competitors. Five tenders were submitted, and that of Mr. Evans, being the lowest, was accepted. The works immediately commenced, and the "ceremony of laying the foundation-stone" (as recorded in this journal at the time) was performed by the Catholic Bishop of Cork with great *eclat*, in the presence of an admiring multitude.

The contractor considered himself a happy man, and forthwith proceeded to accumulate on the site all and every the necessary materials, plant and men, to prosecute with vigour the erection of a structure which was to record in future ages the piety of the Celt, and commemorate, at once the genius of the artist and the skill of the contractor. In fact, to employ a now rather hackneyed quotation, "all went as merry as a marriage bell"; and when he (the contractor) thought— "good easy man, full surely now his greatness was a-ripening"—he omitted to take into consideration the fact that the architect aforesaid had, as a representative in Ireland, a certain Mr. Barnett, who undertook to describe, in the following language, the manner in which the external faces of the walls were to be finished:— The said walls being previously specified to be built of "rubble masonry of *local stone*," faced with hammerdressed limestone, in-random courses, varying from 4 in. to 8 in. in height, pitched from the joints, and well bonded with the rubble backing. The builder, being a native of Cork, took what the *Times* would call an "essentially Irish" view of this, whereas it would now appear he should have considered it from a different stand-point; in fact, he ignorantly supposed that "hammer-dressed stone" meant stone prepared *with a hammer*, and that "random courses,—" if it meant anything—which we strongly suspect it does not —indicated that the work was to be made up at "random" in courses of unlimited extent, provided that the individual stones varied in height between the required dimensions. Eight of the principal architects and builders in Cork, and the surveyor, coincided with Mr. Evans in his interpretation

of the specification; and even the architect's manager, while maintaining his own view, "believes that Mr. Evans did not understand this particular item of the specification"—that is, we suppose, didn't understand the meaning which he wished should attach to the language in question. By "hammer-dressed" stone he should have understood "squared ashlar, with chiselled joints and beds"; and by "random" he ought to know that "regular courses"—each course carried at a uniform height all round the building—was clearly intended.

As a general rule, we may say that it is not safe to assume a "case proven" until both sides of the argument have been considered. Let us, therefore, see how the defendant in the present instance has been sustained by independent evidence. He produces Messrs. Walker and Kenefick, no doubt very respectable and experienced men, and both competitors for this very work. Singular to say, both *exactly took the same view* of the specification as Mr. Barnett. Both had intended to have executed the work in the manner required; and, what is still more singular, both state that they had down in their estimates precisely the same price per yard superficial, viz., 4s. But then, unfortunately, this last fact the price of the work, is most damaging as regards the value of their evidence, because common sense would lead us to the conclusion that so many witnesses of respectability, who have sworn that the work done is cheap at 15s., could not have committed so very gross an error in their calculations; and this is borne out from our own knowledge of what it costs to prepare limestone ashlar in other parts of the country. We presume there are not any very great advantages as regards the economy of working belonging exclusively to the Cork limestone.

As regards Messrs. Cockburn and Dudgeon, their evidence cannot be considered of much weight, as neither had seen the work done, and both are strangers to the locality, a knowledge of which would, in our opinion, be essential to the correct estimating of the value of such work. Their *reading* of the specification is a mere matter of opinion with which, 'as before stated, all the local men disagree. What appears very strange in this case is, the conduct of the architect. The plaintiff says "he decided I was right." "Oh! no," says the defendant, "he only said you were right in saying the stones were chiselled. It was surely the duty of this gentleman to have given a decision in a way that would have put the matter beyond doubt, and probably have prevented this lawsuit. His offer to the contractor to simplify the class of work and increase the price shews beyond doubt that he considered the plaintiff was right; and it is a great misfortune that the arbitrament of the question could not have been left to him, as he proposed it should be—an offer that was readily accepted by the contractor, but rejected by defendant, who would not abide by the decision of his own architect.

Altogether this trial presents several peculiarities, and the moral to be deduced from

it is one which we have exhausted every argument in the endeavour to bring home to the minds of our readers—the necessity of some united action on the part of builders to establish an association to protect their interests, to regulate their movements, and settle on a proper and uniform basis such vexed questions as that which has given rise to the present action. It also shows the gross absurdity of submitting to the decision of a law court questions which neither judges nor juries can or ever will understand; and how desirable it is that a court for the exclusive trial of "building cases" and the like should be established, in which the judge, if not an architect, should at least be assisted on the bench by one or two assessors, who would be professional men, selected from the ranks of the architects, engineers, or contractors, as the case might require, and to whom an unfortunate suitor might look with some degree of confidence. Until such an arrangement can be made, the next best thing to do is to settle such matters by arbitration. This course the plaintiff in the present case was most anxious for, and the other side, too, professes to have been so, but evidently without any real desire for so sensible an arrangement, inasmuch as by the memorandum of agreement prepared by the solicitors, he would virtually have the contractor admit that he had no claim for an extra, which he considered he had. This would, in fact, be deciding the case off-hand, by at once abandoning the very grounds on which the arbitrators were to adjudicate.

With reference to the item of excavation, which contractor priced at 6d. per yard, supposing it would have been in earth, and which had afterwards to be done in rock, we are constrained to say, that we do not envy those witnesses the possession of a mind that can be brought-for the sake of helping out the cause they have espoused—to aid in perpetrating a most flagrant piece of injustice, unwarranted by the contract, and an outrage on common sense.

As the matter now stands, the very rev. defendant has secured a verdict, to which, we believe, he was not entitled, either on the merits of the case or in equity; and the plaintiff is mulcted in heavy costs. *Legally*, the case may be settled to Mr. M'Swiney's satisfaction, and he will no doubt congratulate himself on having achieved a triumph; but morally, we are convinced, he is as much a debtor to the plaintiff as if no such decision had been arrived at, and is bound to make restitution to Mr. Evans, not only for the proper value of the work done, but also for all other losses he has caused him, and for the profits which might have accrued from the fulfilment of the contract.

[Taken from *Irish Builder*, Vol. XII, 1870, p.189]