

variations by the proprietor in the details of the plans and specifications which may be required at any time during the progress of the works. This provides for the change at his will, to which the contractor cannot object, and which works no termination of the contract as a whole. But the parties may before the work is begun agree to such a change as the present change, which leaves the rest of the agreement intact. [Reference to *Gore v. Lord Nugent*, 5 B. & Ad. per Parke, B., at p. 61; *Patterson v. Lockley*, L.R. 10 Ex. p. 335; *Hudson on Building Contracts*, vol. 1, p. 448; *Pepper v. Burland*, 1 Peak N.P. 103, per Lord Kenyon; *McCormick v. Connolly*, 2 Bury R.S.C. 404.]

Here the contract price for the whole as varied was \$7,000: to this extras are to be added, to be ascertained according to a just and reasonable valuation, having regard to the diminution of expense which has resulted to the contractor from the reduced size of the building, and giving credit for the wood and stone and other materials supplied by the owner. The account will have to be taken in this way, unless the parties are content that I should now fix the price. To save the expense of further litigation in the Master's office, I propose to give judgment that the plaintiff shall receive \$8,000 in full of all his work. That I think, is about the fair estimate to be arrived at from the various figures given by all those who spoke as to the lump sum. Of course, the standard price of the whole is \$7,000, subject to its being added to as I have indicated—but with no allowance for superintendence, which was not contemplated as a part of the contract price. . . . The plaintiff himself offered at one time to take \$8,300. And \$8,000 is the sum I would now give, unless either of the parties seeks a further reference. In that case the costs of such reference would be reserved and the Master should report specially on the various items that I have indicated.

But whatever the parties may do as to the price to be paid for the barn, I think that the plaintiff will have to pay the costs of the reference in the Master's office up to the present and the costs of appeal. The whole has been occasioned by his insisting on a wrong basis of payment, and all that has been done proves futile. Of course, if the case goes on, the evidence already taken may be used for what it is worth before the Master—but that does not exempt the plaintiff from now paying these costs. If the case rests here, I would give no costs up to the judgment of reference; but, if the case goes on, I would reserve the costs to be dealt with at the close on further directions.