Eng. Encyc. of Law, 2nd ed., p. 1254. The appellant is entitled to a reference to ascertain the amount he is entitled to recover from the respondents for making good the defective enamel work mentioned in the settlement, and the defective papering therein mentioned.

Hamilton Cassels, K.C., for the plaintiffs. The plaintiffs carried out their part of the agreement. At any rate, the defendant discharged the plaintiffs: Cyc. of Law and Procedure, vol. 6, p. 88; Early v. O'Brien, 51 N. Y. App. Div. 569, at p. 577; Smith v. Wetmore, 167 N. Y. 234. Owing to the architect's refusing to point out the defects in the work or to formally pass upon the same, the plaintiffs were relieved from any obligation to shew that the work was completed to the architect's satisfaction: Hudson on Buildiing Contracts, 3rd ed., pp. 347, 356 et seq.; Doll v. Noble, 116 N. Y. 230; Pawley v. Turnbull, 3 Giff. 70, at pp. 84, 85. The work was in fact done to the architect's satisfaction.

At the close of the argument the judgment of the Court was delivered (viva voce) by Moss, C.J.O.:—It may be that, as the pleadings were framed, the issue was as to whether or not the plaintiffs had carried out the agreement of the 27th October, 1908, by doing their work to the satisfaction of the architect. But before the Chancellor it got far beyond that. It soon appeared that up to the time of the plaintiffs finishing the work, the architect had not expressed any view with regard to it; and before they had a chance to remedy any defects after he had expressed disapproval, the plaintiffs were summarily discharged. They seemed willing to complete the work, but as early as the 18th November they were told the work had been placed in other hands. The telegram of the 20th November reiterates this. A man who was sent over by the plaintiffs was told that he was on the premises at his own risk. So the plaintiffs were placed in the position that they had never had the defects pointed out to them, nor a chance to make right anything that might have been wrong. In that state of the case it became a question of what course should be taken in order to ascertain the respective rights of the parties; and either by express or tacit consent they entered into the whole matter. The parties proceeded to try the case to find out the value of the work, and to determine what compensation the plaintiffs should make the defendant for what he had spent to have the work completed. The learned Chancellor passed on that, and there was no objection at that time to his doing so. Then the case went to the Divisional Court, where it was again fully discussed, and that Court was satisfied not to disturb the learned Chancellor's finding. We