

the employ of and responsible to plaintiffs. Plaintiffs supposed they could rely and did rely upon the architects, and it seems a most extraordinary thing that, after the estimate of \$20,500 and the additional allowance of \$500 as an outside limit of cost, the architects should, without the fullest knowledge and clearest understanding on the part of both plaintiffs and defendants, have caused an expenditure by plaintiffs of \$32,459.10.

Plaintiffs' contention is, that, upon the true construction of the agreement, they are entitled to 8 per cent. upon the actual cost of the building, etc., and that defendants must either accept the lease at the rental so fixed or refuse it, and, if they have any claim for damages, assert it by suit upon plaintiffs' covenant to erect a building at a cost not to exceed the \$21,000, and to lease such building to defendants. I do not agree with this. The covenants are not, within the meaning of plaintiffs' contention, independent covenants. The agreement must be considered as a whole, and it is to lease the building to be erected, and when completed, to defendants. Defendants are entitled to occupy the building and to have a lease of it, and the question is as to the rent defendants should pay. This question of rent should be determined in the present action, and, if the pleadings require any amendment to define the issue, such amendment should be made. It would not be in accordance with present day practice to send defendants out of Court without the building and to have them told that their remedy is to look for damages sustained by reason of their not getting the premises at the rental stipulated for.

Upon what amount, as the cost of construction, should defendants pay the 8 per cent. as part of the rental, within the true intent and meaning of this agreement? . . . The architects say, taking the figures as approximate, that the total cost was \$32,459.10, and they mention items of extras amounting to \$7,400, leaving \$25,059.10, or an excess of \$4,059.10 above the \$21,000. In order to bind defendants to pay percentage as rental upon any greater sum than \$21,000, they must have known of and consented to such excess-expenditure, and the burden of shewing this is upon plaintiffs. . . .

I find, on the evidence, that on no part of this \$4,059.10, except on a part of the architects' fees, . . . should defendants be charged the 8 per cent. As to no part of this