

stipulated date was, in part at all events, due to the performance of the work being prevented by the acts of the defendant.

The evidence establishes that there was no unreasonable delay on the part of the plaintiff, and that it was impossible in any case to have completed the work by the stipulated date owing to the considerable addition to it caused by the addition to the warehouse of another story and the inclemency of the weather. It may be that as to the additional story the plaintiff was not entitled to any extension of time owing to his not having, at the time the agreement as to the work was made, taken care that an extension was provided for. Different considerations, however, apply to an extension on account of delay occasioned by the inclemency of the weather. The 12th paragraph of the contract provides as follows: "Should any work be delayed beyond the time mentioned in the agreement by the inclemency of the weather . . . the architect shall make a just and reasonable extension of time." In *McNamara v. Skain*, 23 O. R. 103, it was decided that a contractor was not entitled to any extension of time, none having been given by the architect. . . . In that case the provision was that the architect should have full power to extend the time for completion, which plainly gave to the architect a discretion as to whether any extension should be granted. As I read the 12th paragraph . . . the architect has no such discretion, but is bound, if there has been delay owing to the causes mentioned in the paragraph, to make a just and reasonable extension of the time, and his failure to perform that duty ought not to subject the plaintiff to the serious consequences which would result from the conclusion that, not having applied for and obtained an extension, he was bound to complete by the time named in the contract, with the consequent liability to the large damages for which the defendant stipulated as the penalty for the delay.

With regard to the claim for damages for negligence in the construction of the basement story, it is sufficient to say that we see no reason to doubt the correctness of the view taken by the referee that no damages were proved to have resulted from this negligence, if negligence on the part of the plaintiff was established.

Appeal of the defendant dismissed with costs, and appeal of the plaintiff also dismissed with costs.