

In *Gray v. Stephens* (1906), 16 Man. 189, there was a provision for time allowance in case the plaintiff was delayed in the prosecution or completion of the work, but that "no such allowance shall be made unless a claim therefor is presented in writing to the architect within 36 hours of the occurrence of such delay." The plaintiff without his default and within the meaning of the clause was prevented from beginning his work, and after beginning from completing it—he did not present any claim to the architect, and the Manitoba Court held that he had no right to an allowance. But there nothing done by the owner or his architect made it impossible for the contractor to make a claim, and the case is not at all in point so far as I have quoted it. But the remainder of the decision is in point—the owner was to be paid \$20 a week in case of delay beyond the time fixed. The time fixed for completion was September 15th, 1903, but the owner ordered some extra work done which was commenced only January 14th, 1904. The Court held that the allowance of \$20 was payable only up to January 14th, because the defendants, having ordered the work to be done which only began January 14th, was estopped from claiming damages for delay beyond that date, following and applying *Holme v. Guppy*, 3 M. & W. 387, and cases cited in this judgment. The delay allowed must give time to do the whole of the work including the extras, which the owner is responsible for the ordering of.

The learned trial Judge, upon evidence which wholly justifies such a finding, as he says that he believes the evidence of Hamilton and Burnham, finds that Vineberg gave a verbal assent to order for the alterations; and the architect gave a written order which is set out in the reasons for judgment below.

The defendant Vineberg now complains that the direction in this order, "all work done as an extra where owner and contractor have not agreed on price before commencing said work the contractors must keep an account of all materials and time spent in said work, so that price of said work may be given by the architect as per agreement" was not followed by the builder. But this is not either in contract or in order a prerequisite either to doing the work or to being paid for it—it is a direction given by the architect (who is in this particular matter the agent of Vineberg) given in order that he may the more easily and accurately fix and ascertain the price