

contract price, there remained due to him on the contract, apart from the additional work, \$40; but contended that the work which the plaintiff contracted to do had not been completed, and that his action must, therefore, fail; that in any case the work had not been completed within the time limited by the contract, and that the defendant was therefore entitled, under its provisions, to \$500 as liquidated damages for each week that elapsed after the time so limited during which the work remained uncompleted, and that the defendant was entitled to damages for the negligent manner in which the plaintiff had constructed the basement story of the warehouse; also that the plaintiff was not entitled to be paid for the additional work because an order in writing for the doing of it was not given in accordance with the terms of the contract, and urged that until the architect had determined what was proper to be paid for it, the plaintiff was not in any case entitled to recover for the additional work.

E. E. A. DuVernet, K.C., and W. B. Milliken, for the plaintiff.

The judgment of the Court was delivered by MEREDITH, C.J.:—In addition to the reasons given by the referee for holding that the contracts had been performed so as to entitle the plaintiff to recover, his judgment may be supported on the further ground that the sidewalk which was said by the defendant not to have been properly laid was no part of the warehouse . . . but a separate and independent piece of work, and his failure to lay it would not disentitle him to recover for what was payable to him on the completion of the contract.

The other objection . . . was that it was the duty of the plaintiff under his contract to tar the whole of the outside basement walls below the ground level, and that he had not done this; but we agree with the view of the referee that the tarring of these walls was not work which the plaintiff was under the contract bound to do.

With regard to the claim for additional work, it is, in view of what occurred before the referee, not open to the defendant to raise the objection urged before us. . . . This sum of \$3,066.51 had been agreed on by Mr. Stephenson, one of the architects, and Mr. Aldridge, a builder called as a witness on behalf of the plaintiff, as the value of the extras, and this was done with the consent of counsel.

We also agree in the view of the referee that the defendant was not entitled to the \$500 a week for the delay beyond the time fixed by the contract for completion. There was ample evidence to warrant a finding that the failure to complete the work by the