

DIVISIONAL COURT.

OCTOBER 26TH, 1909.

HUTCHINSON v. ROGERS.

Mechanics' Liens—Building Contract—Claim of Contractor—Additional Work—Value of—Consent—Non-completion of Work—Damages for Delay—Inclemency of Weather — Extension of Time—Architect—Negligence.

Appeal by the defendant (the owner) and cross-appeal by the plaintiff (the contractor) from the judgment of an official referee in an action to establish and enforce a lien under the Mechanics' and Wage-Earners' Lien Act.

The plaintiff's claim was upon an agreement dated 30th October, 1906, between him and the defendant, by which the plaintiff agreed to execute and perform the entire excavating, masonry, and brickwork required for the erection of a warehouse for the defendant, agreeably to the plans, drawings, and specifications prepared for the works by Denison & Stephenson, architects, and to find and provide material of all kinds for completing the said works, for \$17,300, and upon a subsequent agreement of the 10th January, 1907, by which the plaintiff agreed to build an extra ground floor story in the warehouse for \$4,640. The plaintiff also claimed payment for additional work, consisting of alterations to, deviations from, and additions to the original plans and specifications, and for the material used therein, for all of which he alleged the defendant agreed to pay him.

The amount which the plaintiff claimed to recover in respect of the two contracts was \$40, and in respect of the additional work was \$5,232.10.

The referee found that the plaintiff was entitled to recover \$3,250.21, and that he was entitled to a lien for that sum. The referee did not give effect to any of the objections urged against the plaintiff's right to recover, and disallowed the defendant's claim for damages.

The appeal was heard by MEREDITH, C.J.C.P., MACMAHON and TETZEL, JJ.

A. B. Morine, K.C., for the defendant, conceded that the plaintiff had performed additional work to the value of \$3,066.51, for which he had not been paid, and that, if he had completed his contract so as to be entitled to sue for what remained unpaid of the