

perfect material, or inferior workmanship, instead of having same removed.

I do not think that what the defendants did, operated as a waiver of any of their rights under the contract, or that it constituted a new contract with the plaintiff. The parties are still bound by the terms of the written contract.

Plaintiff admits that part of his contract was not completed at the time of the trial. The plastering, mentioned in the specifications, was not done, and in his evidence, he said he was prepared to do it when ordered by the architect.

The written contract, made the production of the architect's certificate, a condition of the plaintiff's being entitled to payment. No certificate was issued. The certificates were not withheld, either through fraud or collusion on the part of the defendants, or with any intent to injure plaintiff, but rather in an effort to bring the whole matter to as satisfactory a conclusion as possible, and so that the architect might be in a position to deal with the contract, and the rights of both owners and contractor, having regard to the error or mistake, and the consequences thereof.

The situation was an unfortunate one for all concerned, and one not easily disposed of to the satisfaction of any of the parties, and I believe defendants endeavoured to bring about a solution of the difficulty, with as little loss as possible all around.

The plaintiff has shewn no right of action against the defendant Herbert, and I think the action as against the other defendants, is premature.

With regard to the extras, if it is proper that I should deal with them on the evidence submitted, I find that they are largely for labour and material in carrying some of the foundations to a greater depth, than the plaintiff originally contemplated, and for increased depth of concrete work consequent thereon. So far as I can make out from the evidence (the plaintiff himself, is not very clear on the matter), a charge of \$85.75 is made for the extra excavation, and another for \$603.90 (made up of \$286.50 and \$317.40) for increased depth of concrete.

The specifications which were made part of the contract, expressly provide that "the contractor before figuring upon this work, will be required to make himself acquainted with the ground, and its earth, and rock formation, and no question must afterwards arise as to his lack of knowledge in re-