

before making changes, but the question is, do the words used imply that the plaintiffs were not to make changes, unless both the defendant and his architect made the requisition for them? I think they do not so imply, but that the plaintiffs were bound to comply with the requisition of either, and, if so, that the authority of either for a change would entitle the plaintiffs to be paid accordingly. The use of the word "require" supports, as I think, this construction, as it is manifestly used in the sense of demanding and not of needing, and a demand would be useless which could not be enforced; also the work was to be done under the "direction" of the architect.

Then, if the architect required a change, and the plaintiffs complied, they would in so complying be fulfilling their contract, and if they refused they would not be fulfilling it. Having so fulfilled their part, they would be entitled to ask the defendant to fulfill his part by paying them.

It is not, therefore, a question whether the buildings have been constructed in accordance with the original plans and specifications, but whether any changes therefrom have been made in accordance with the contract.

Then what proof did the plaintiffs offer of their performance of the work? The defendant did not agree to pay except 33 days after its completion. The only evidence offered was the defendant's answers on his examination for discovery admitting that he had four progress certificates, the last under protest because the plaintiffs were not entitled to it, and practically admitting, as being signed by the architect and as being unpaid, another progress certificate for \$200 and the final certificate for \$1,270 and a letter received by him from the architect stating that the plaintiffs had completed their work, and it was not fair to hold back the final certificate any longer, and he had given it to them. . . .

The defendant . . . stated that he did not authorise any departure from the contract or authorise or require any alterations or deviations from the contract, and that he had been living in the house since October, 1908. He was then asked what bond the brickwork was in, and objection was at once made that no evidence could be given as to the actual work not being in accordance with the plans and specifications, in the face of the architect's certificate, no fraud being alleged. To this objection the trial Judge gave effect. A number of instances were mentioned by the defendant's counsel in which it was alleged that the contract had not been complied with, and reference was made to the particulars delivered for other instances, and it was proposed to examine the defendant and call other witnesses to establish these departures,