

out difficulty, have been ascertained from the plans and data, which defendants furnished.

Plaintiff had had but little experience with buildings of this character, and his error, or mistake in the laying out, is largely attributable to that fact. After it had come to the knowledge of the architect that the walls were not being built on the true lines (and at that time a very considerable part of the concrete foundations had been put in), he discovered that if they were allowed to remain in the position which plaintiff had constructed them, changes would be necessary in the working drawings of the steel work which was to be placed on these foundations, and that it would otherwise occasion increase of expense.

As a compromise, and to avoid delay, and the additional expense which would result therefrom, defendants, the owners, were prepared to leave the foundations as they were constructed by plaintiff, provided that these changes were made without increased cost to them, and that the buildings would not suffer in appearance.

In the course of the correspondence between the architect on the one side, and the plaintiff and his solicitors on the other, a proposition made by the defendants for such compromise was rejected.

At the time of this correspondence, plaintiff was asking for a certificate for payment on account; but this was refused until some compromise, or settlement was arrived at, respecting the error in the foundations. The architect in one of his letters, intimated that unless the proposed compromise were entered into, he would have no other recourse but to have the foundations taken out, and placed in their proper position according to the plans. He did not, however, resort to this course; to have done so, would have caused such delay, as would have resulted in serious loss to the owners, not only because the time when they could get possession, and make use of the buildings, would have been postponed, but also because of the liability they would incur to contractors for other parts of the works, through being delayed in their contracting operations.

Defendants, to avoid this loss and delay, allowed the building to proceed, relying for their remedy on the other terms of the contract, by which they claimed the right to have the architect assess the damage for any inferior, or im-