

he proceeds with the accounts and reports the total cost on the footing of quantum meruit . . . and he allows 10% for superintending the work. The defendant appeals on both branches. Of course, if the Master erred as to the contract issue, his whole report falls as being without foundation.

[The learned Judge, after referring to the evidence on one phase of the case as casting light upon the relative credibility of the two litigants, with regard to which he says that the testimony of the defendant impresses him more favourably than that of the plaintiff, proceeds:] Having carefully read and considered the evidence taken by the Master on the issue of contract or no contract, I feel constrained to differ from the conclusion he has reached.

The contract for building the barn in question was in writing, filled up by the plaintiff and signed by both parties, in which the plaintiff agrees to put up the building according to the plans and specifications prepared by qualified architects, for the price of \$7,000. The barn was to be built 140 feet by 50, and the plaintiff held the plans and specifications, a change was made by mutual consent by which the dimensions were to be 120 x 50, and some timber from another barn was to be contributed by the defendant; he was under the belief and expectation that this change would have reduced the cost by \$1,000. No intimation was given to the defendant that the work as prosecuted was otherwise than in pursuance of the contract and its plans and specifications. The contract was on the 5th March; the work was begun on the 2nd May; and on the 6th December, at or about its completion, an account was for the first time sent in by the plaintiff claiming \$8,630, no claim for superintendence being mentioned. On the 15th December McKenzie writes to the defendant that he will accept \$8,315 in full, making (with the deduction of \$5,000 paid) the net balance for the whole work \$3,315. (He asked that some few materials on the ground shall be turned over to him on this basis of settlement.) The Master's finding on a quantum meruit basis, including superintendence, is far in excess of this—but the exact figures have not been laid before me.

The burden is on the plaintiff to shew and shew clearly that the contract was wholly displaced and at an end for all purposes. All the undisputed facts that he has to rely upon are the change I have spoken of as to size and a few hundred dollars' worth of materials. It is noticeable that the plaintiff's first attitude was that this was no more than a partial change or modification, and