

architect states, so long as there was no fraud or deceit or collusion the defendant cannot successfully complain.

The trial Judge has found in effect, that all the extras were ordered by the defendant, that the defendant knew and apparently approved of what was going on. That being the finding and upon evidence, it is difficult to interfere much as my inclination would prompt, owing to the amount of extras saddled upon the defendant, an amount which seems unreasonable, and excessive.

The contract provides that as to the value of the work added, or omitted, the architect is to decide and his decision is to be final. The architect was of defendant's choosing. He was easy going and unbusinesslike, but he was honest, and as the plaintiffs have not been guilty of any fraud, it should not be assumed that they have wilfully made false or excessive charges.

The statements made by the architect on his examination for discovery, and which were put in at the trial as against him, were most damaging. He admitted that in passing plaintiffs' accounts, he did not make any measurements, get any accounts or statements of quantities, etc., etc. Even in the face of all that it may be that the defendant was not overcharged, but there is the feeling that perhaps the defendant is being asked to pay too much. I cannot say that it was the duty of plaintiffs to furnish invoices and statements of quantities and time and wages, when not asked, but it is manifest that to a contractor, not honest, who found the owner's architect so easy a mark as Burnham was, there would be a temptation to over charge. The contractors' accounts were taxed by having a lump sum knocked off, on the general principle that a contractors' account might be excessive.

As to the defendant's claim of \$25 per week for the time, after time mentioned for completion of contract—until house ready—the defence is that plaintiffs were delayed by the extras ordered. That is a question of fact and the trial Judge has found against defendant.

The case of *Dodd v. Churton*, [1897] 1 Q. B. 562, is an authority against the defendant on this point. The head note of that case is:

"Where in a contract for the execution of specified works it is provided that the works shall be completed by a certain day, and in default of such completion the contractor shall be liable to pay liquidated damages, and there is also a provi-