

Some of the other cases, also, which allow a recovery for work done upon the oral order of the owner are decided under facts which make a strong case in favor of the contractor, either on account of the extensive character of the work done, or on account of a uniform course of ignoring the provisions of the contract.

The weight of reason is with those cases which deny a recovery for work done upon a building covered by the contract upon the mere oral order of the owner, where there is such a stipulation in the contract, as the owner should have a right to presume that any alterations or minor changes ordered by him would be included within the contract price unless he expressly agreed to pay extra for the same, or from the nature and extent of the work ordered it is apparent that the parties contemplated and expected that such work should be paid for as extra.

One court in summing up the law states that 'it makes no difference if the extra work was ordered by the owner, provided it was on the mill. As we have said the building need not accede to the owner's views; he may refuse, or he may assent, under the protection afforded by this clause. If extra work be done without it, the right to additional compensation is waived. Any other interpretation of such words would make them valueless to the parties. The appellee's view, if adopted, would deny to the owner the privilege of suggesting any—the most trivial—alteration of the work, without incurring the risk of opening the whole contract; then the written agreement would be substituted by a mere *quantum meruit* claim for work and labor, to be afterwards adjusted upon uncertain oral testimony. And in many cases his mere presence on the premises might subject him to extra charges, on the ground of acquiescence in alterations made by the builder, when it might well be supposed that there was to be no additional charge, because not previously attached to the contract.' The view taken in this case is so obviously sound that it is strange that any courts have departed from it."