

rendering." "Rendering" is defined as "the laying on of a first coat of plaster on brickwork or stonework." Century Dict. ad voc. It is contended that no lathing goes on inside walls, but that the "rendering" process is used without lathing. The particular wall for which a claim is made for extras is held by the trial Judge (p. 113) not to be an outside wall, but in giving judgment (p. 154) he says: "There is no claim made by the plaintiff as extra for the plastering that was done here; I cannot see why the lathing is in any different position . . .; this is not an inside wall . . ." And, after discussion with plaintiffs' counsel, the Judge declines to allow the lathing at that place.

I think the learned trial Judge was right when, during the course of the trial, he said the wall was not an outside wall. The specifications (p. 25) provide that "the whole of the outside walls and partitions . . . excepting gymnasium and boiler room, is to be lathed . . . the walls and partitions throughout the basement . . . to be rendered . . ." The particular wall was not, under these specifications, to be lathed; it was lathed under instructions of the defendant, and this work is properly an extra, and should have been allowed for.

In reference to the claim for the gymnasium, the result will depend upon whether the gymnasium is in the basement. It is alleged that the floor of the gymnasium is below that of the basement generally, but I find that, upon the plans, a separate plan being given for each storey, the gymnasium appears upon the plan of the basement. I think, then, that it should be held that the gymnasium is part of the basement, and the appeal upon this point should be disallowed.

As to the topping of the pillars, these pillars were fitted with plaster tops. I am unable to understand how such work can come within a contract for "lathing and plastering and rendering." It is true that plaster was used, but the work is utterly different from "lathing and plastering and rendering." The appeal should be allowed upon this point.

It is contended by Mr. Crerar that because the plaintiffs are in morals entitled to have their work accepted, the provision of the contract that 20 per cent. should not be paid until the acceptance of the work should not stand in his