

The defendant pleads that before the commencing of the works, he asked the plaintiff for an estimate of the cost of the works, and the defendant gave him an estimate as between \$500 and \$600 not to exceed \$600 that defendant proceeded with the work and subsequently rendered accounts for \$1388.37, but plaintiff without being obliged to do so, offered \$550 as being the balance of a sum of \$1000, \$450 having been already paid. This offer was made notarially previous to the institution of the action.

Judgment has gone in plaintiff's favor for the sum of \$761.38, condemning each party to pay his own costs.

I find this judgment erroneous. In the first place, when a contractor makes an estimate, even although he does not assume a contract for a fixed price, and proceeds to fulfil his undertaking and runs it up, as in this case, to more than double his estimate without saying a single word to the proprietor concerning the matter, his accounts are to be most closely watched. In this instance, it appears that the plaintiff's books were really very badly kept. The plaintiff had not adopted any system by which the time of his workmen could be checked. Every workman was free to return his own time. None of these workmen were examined. There is much proof that the work ought not to have cost nearly as much as it has cost, by competent contractors.

I am of opinion that the plaintiff has not proved more than the offer which the defendant has made, and that the defendant's tender ought to have been accepted. I am of opinion to reverse the judgment and confirm the defendant's tender and order the plaintiff to pay defendant the costs.

Judgment in Review. "Considering that it has been proved that the plaintiff made to the defendant an estimate