

ance of such stipulations in the contract, but have not so expressly stated.

The theory of alteration, rescission, or abandonment is based upon the principle that parties may alter their contract at pleasure by oral agreements, unless the contract be one which the law requires to be evidence by writing and signed; that the provision that alteration must be made in writing is not strictly binding upon the parties when both agree to the alteration and change. It is held that a rescission exists whenever the owner has ordered and the contractor agreed to do whatever extra work the parties mutually agree upon. But in one case it is held that where the contractor does not exact a promise of payment as for extra work upon the owner's ordering the change, and does not inform the owner that it will entail extra expense the owner may well infer that no extra charge will be made.

The theory most frequently adopted in avoiding such stipulations in contracts is that of waiver, it being held in a large number of cases that such a provision in a contract may be waived.

The ultimate question in all cases is the effect the subsequent transactions between the parties have upon their rights and liabilities. The answer to this question depends upon the character of the subsequent transactions. It is uniformly held that the mere doing of extra work or the making of alterations will not entitle the contractor to recover therefor in the absence of a written order. This is true where the owner had no knowledge of the alteration, and has likewise been held true where the owner has had knowledge of the alteration. In the latter case the court states that 'there is no foundation in law nor warrant in reason for saying that in a case like the present, where a party stipulates that he will not pay for alterations in the work unless they are agreed upon and reduced to writing beforehand, he shall nevertheless be held responsible upon a *quantum meruit*. It would be to deny him the benefit of written evidence and subject him to the uncertainties of parol proof depending upon the fluctuating opinions of other persons as to the character and the value of the work, and to bind him against his will.

But where the owner has made changes in the plan of the build-