

owner . . . \$25 for each week, or part of a week, elapsing thereafter, until the said house is ready for occupation, such sum not to be a penalty but as liquidated damages . . . which damages may be deducted by the owner out of any balance payable to the contractors herein."

It seems to be settled that language such as appears in this clause does not bind the contractor to complete, not only the work set out in the contract, but also the "extras" which may be ordered, within the time set.

In *Dodd v. Churton*, [1897] 1 Q.B. 562 . . . it was held that the contractor in such a case is exonerated from the liability to pay liquidated damages unless by the terms of the contract he has agreed that—whatever additional work may be ordered—he will, nevertheless, complete the works within the time originally limited. And this is so even if the contract contain a clause giving the architect power to extend the time for completion in case of extras being ordered . . .

[Reference also to *Westwood v. Secretary of State*, 7 L.T.N.S. 736, 11 W.R. 261, 262; *Roberts v. Bury Commissioners*, L.R. 4 C.P. 755, L.R. 5 C.P. 310; *Jones v. St. John's College*, L.R. 6 Q.B. 115; *Gray v. Stephens*, 16 Man. L.R. 189; *Holme v. Guppy*, 3 M. & W. 387.]

The learned trial Judge, upon evidence which wholly justifies such a finding—as he says that he believes the evidence of *Hamilton* and *Burnham*—finds that *Vineberg* gave a verbal assent to an order for the alterations; and the architect gave a written order . . .

The defendant *Vineberg* now complains that the direction in this order, "all work done as an extra where owner and contractor has not agreed on price before commencing said work the contractors must keep an account of all materials and time spent on said work, so that price of said work may be given by the architect as per agreement," was not followed by the builder. But this is not either in the contract or in the order a prerequisite either to doing the work or to being paid for it—it is a direction given by the architect (who is in this particular matter the agent of *Vineberg*) in order that he may the more easily and accurately fix and ascertain the price to be paid. The omission to keep track does not disentitle the contractor to be paid—although it would justify the architect in allowing as little as he could.

From a perusal of all the evidence, I can see nothing to indicate that the architect acted otherwise than honourably, nor