

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

I. F. Hellmuth, K.C., and Z. Gallagher, for the defendant Gallagher.

F. Erichsen Brown, for the plaintiffs.

S. H. Bradford, K.C., T. H. Barton, and C. Evans-Lewis, for other lien-holders.

The judgment of the Court was delivered by MIDDLETON, J.:—Dealing with the figures as ascertained by the Referee, his conclusion cannot be supported.

The amount of the contract was.....	\$3,905.00
Extras as ascertained by the architect.....	103.35
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In all	\$4,008.35
The defendant has paid	2,502.00
And is entitled to be allowed	
Omissions as certified	286.15
Rectification of defective work	311.20
Cost of completion	600.00
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	\$3,699.35
Balance remaining due	309.00

Instead of \$793.90 as certified.

The Referee has erred by assuming that the price payable is not the contract-price, plus extras, but the amount of the progress certificates plus the amount spent by the contractor thereafter plus extras.

The four items involved in this statement are each attacked by both parties. We cannot disturb the finding of the Referee on the extras, omissions, or rectifications (the item respecting cost of completion we deal with separately). As to them the architect is made judge, and there is no reason to think he has not acted fairly. Quite apart from this, upon the evidence the amounts allowed seem reasonable and well warranted by the evidence. As to most of the items there is no conflict, and we cannot disregard the weight of direct evidence, in favour of mere inferences arising from more or less unsatisfactory statements made by the architect from time to time.

With reference to the \$600 allowed for completion of the work: over \$2,000 was actually paid for this and the rectifica-