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LIEN CLAIM.

IN THE  
OFFICE OF THE CLERK  
OF THE COUNTY OF ATLANTIC.

<p>WILBER D. SPEECE, <i>Claimant,</i></p> <p style="text-align: center;">v.</p> <p>J. ANTHONY DELVECCHIO, <i>Owner.</i></p>	}	Lien Claim.
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ATLANTIC COUNTY, ss.

Be it known that Wilber D. Speece, of Delanco, 20  
New Jersey, files this claim in his own right and  
claims a lien upon the building and lot or curtilage  
whereupon the same is erected and hereinafter par-  
ticularly described, pursuant to the provisions of an  
act of the Legislature of the State of New Jersey,  
entitled "An act to secure to mechanics and others,  
payment for their labor and materials in erecting  
any building" (revision of one thousand eight hun-  
dred and ninety-eight) and the several supplements  
thereto and acts amendatory thereof, for a debt con- 30  
tracted and owing by J. Anthony DelVicchio, as  
owner, to said Wilber D. Speece, claimant, for ma-  
terials furnished and labor performed for the erec-  
tion and construction of an addition or improvement  
to said building, the last materials being furnished

and the last labor being performed within four months prior to the filing of this lien claim, as hereinafter set forth, to wit:

1. The original building was constructed of wood and consisted of a two-story residence or bungalow to which an extension, addition or improvement was added on the side for a distance of five feet, flushing it with the remainder of the house; the wall between  
10 the living room and dining room was removed; the porch was removed from the front and side of the house, replacing it with an enclosed porch; and an additional porch was added also, being an open porch, latticed and with Colonial columns; the back porch was torn down and the roof extended; four rooms and bath were partitioned off in the front of the house on the second floor, and a bath room installed with necessary bath room fixtures; the attic  
20 steps were moved to the rear of the building and numerous other improvements were made to the house and to the addition or extension constructed in compliance with the orders and contract of the owner, J. Anthony DelVicchio, as will more fully appear in the bill of particulars and statement of account attached hereto.

2. The lot of land or curtilage upon which this lien is claimed and said building erected is located in Hammonton, in the County of Atlantic and State  
30 of New Jersey, and particularly bounded and described as follows:

BEGINNING at the South corner of Horton and Pleasant Streets, thence extending (1) Southwestwardly by the southeast side of Pleasant Street one hundred feet to land of one Sordan; thence (2) southeastwardly by the northeast line of said land

of Sordan one hundred feet; thence (3) northeastwardly parallel with Pleasant Street, one hundred feet to the southwest side of Horton Street; thence (4) by the same northwestwardly one hundred feet to the place of beginning.

Being the same land and premises which were granted and conveyed unto the said Anthony DelVecchio and Mary DelVecchio, his wife, by deed from John O. Swann and Anna A. Swann, his wife, dated  
10 October 8, 1925; recorded in the clerk's office of Atlantic County on November 24, 1925, in book 801 of deeds, page 329, &c.

3. The name of the owner of the said lot or curtilage whereon the said building is erected and on which this lien is claimed is: J. Anthony DelVicchio, who has an estate in fee simple therein.

4. The name of the person who contracted the said debt and for whom and at whose request the  
20 said materials were furnished for which the aforesaid lien is claimed, is: J. Anthony DelVicchio, owner, and the amount of said debt so due from said J. Anthony DelVicchio to said Wilber D. Speece, is the sum of \$5,312.60 besides interest upon said sum from January 14th, 1926, to March 4th, 1926, amounting to \$45.37 making a total of \$5,357.97 no part of which debt of \$5,357.97 having been paid, the said sum of \$5,357.97 is now justly due and owing, as aforesaid.

5. The following is a bill of particulars and statement of account of the aforesaid materials furnished and labor performed by or at the instance of Wilber D. Speece, this claimant, who for and at the order of J. Anthony DelVicchio, owner, for the  
30

erection and construction of the said addition and improvements to the said building, showing the prices at which and the times when the same were furnished, giving credit for all payments made thereupon and all deductions that ought to be made therefrom and exhibiting the balance justly due to the claimant, the said Wilber D. Speece, from the said J. Anthony DelVicchio, owner, and which said materials were furnished and labor performed between the 26th day of October, 1925, and the 14th day of January, 1926, which last mentioned date was the last date upon which materials were furnished or labor performed for which this lien is claimed.

10 J. ANTHONY DEL VICCHIO,  
 TO WILBER D. SPEECE Dr.  
 For the erection and construction of an addition to a two-story residence located at the corner of Horton and Pleasant Streets, Hammonton, Atlantic County, New Jersey, as per contract dated October 26, 1925, between J. Anthony Del Vicchio, Owner, and Wilber D. Speece, Contractor (copy of which contract is attached hereto and by this reference thereto made a part hereof) ..... \$4,200.00

30 For the erection and construction of the following Extras not included in the above contract, but ordered personally by said J. Anthony Del Vicchio of Wilber D. Speece, viz:  
 Altering laundry, kitchen and office location; putting in new partitions in laundry;

closing up door in hall; cutting door from kitchen to dining-room; cutting in window for bath-room..... \$800.00  
 Cutting and laying sub joice and laying sub floor in kitchen and laundry..... 275.00  
 4486 sq. feet composition flooring at 80¢ per foot..... 388.80  
 New window put in side of house after house was sheathed and weather-boarded ..... 90.00  
 Making of sewing-room second floor front after house was laid out and drawn, taking part of hallway ..... 165.00  
 Putting closet full length of bed rooms ..... 170.00  
 Putting on Celotex instead of lath throughout the house 600.00 20  
 Cutting in opening for shower bath, relining of same; knob, concealing of pipes ..... 130.00  
 Built in shower bath and shower plumbing ..... 300.00  
 Change to Colonial siding..... 1,000.00  
 Copper flashings ..... 60.00  
 Change of location and sun parlor from one side to the other and open porch; new French doors cut in living-room instead of dining-room change of fire brick from red brick to Winslow brick..... 400.00 30

Replacing of old toilet fixtures in laundry .....	130.00	
Tiles bath-room sides .....	400.00	
		4,908.80

TOTAL CHARGES .....	\$9,108.80
Total charges brought forward .....	\$9,108.80

Less the following credits and deductions:  
Received from J. Anthony Del

10	Vicchio		
	October 26, 1925, by check	\$350.00	
	November 6, " " "	500.00	
	" 17, " " "	350.00	
	December 1, " " "	350.00	
	" 9, " " "	300.00	
	" 11, " " cash	146.20	
	" 22, " " check	500.00	
	January 6, 1926, " "	500.00	

20		\$2,996.20
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Deduction or credit allowed  
by Wilber D. Speece, Con-  
tractor, to J. Anthony Del  
Vicchio, Owner, by reason  
of the fact that work upon  
the house aforesaid has been  
discontinued because of a  
circumstance created by the  
Owner and outside of the

30	control of the Contractor, this item being the whole total cost necessary to com- plete the work contracted for as above .....	800.00
----	--	--------

3,796.20

Balance due January 14, 1926 .....	\$5,312.60
Interest upon \$5,312.60, from January 14, 1926, to March 4, 1926 .....	45.37

Amount justly due from the Owner afore- said to this Claimant on March 4, 1926	\$5,357.97
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In witness whereof, the said WILBER D. SPEECE,  
by WILLIAM I. GARRISON and CARLTON GODFREY, his  
attorneys, has hereunto signed this lien claim this  
fourth day of March, nineteen hundred and twenty-  
six.

WILBER D. SPEECE,  
By CARLTON GODFREY,  
WM. I. GARRISON,  
*His Attorneys.*

SPECIFICATIONS

of the work and material required in the re-model- 20  
ing and completion of a house located at corner Hor-  
ton and Pleasant Streets, Hammonton, New Jersey,  
for J. A. Del Vecchio of the City of Philadelphia,  
State of Pennsylvania.

W. D. Speece, Contractor and Builder, of  
Delanco, N. J.

GENERAL: All work under these specifications  
must be done in a thorough workmanlike  
manner and subject to the approval of the 30  
Owner.

The contractors for this work must pay for  
all permits required for the successful com-  
pletion of the work, and meet all require-  
ments of the Officers.

There shall be no lien or right to claim  
any lien against the building or its site for

labor or materials furnished by any sub-contractor or material man, nor shall there be any claim for such labor or materials on the Owner, other than the claim of the general contractor.

Before any final settlement is made the general contractors shall file with the Owner a release of liens with affidavits attached certifying to its correctness.

10 PLASTER: All new partitions, side walls and ceilings to be lathed and plastered.

CARPENTER WORK, LUMBER AND LABOR: All work to be performed in a thorough and workmanlike manner; Lumber to be of good quality, suitable for the purpose used.

MILL-WORK: All framing to be of yellow pine or fir.

PORCH-JOIST: 2 x 8 Y. P.

20 FLOORING: Front and back room upstairs, hard wood; dining room and living room, hard wood floors; stair treads and risers to be of hard wood; bath room composition flooring; kitchen Y. P. No 1; laundry Y. P. No. 1; Hall on first floor and room to be used as office, hard wood.

SHEATHING: to be 1 x 10 S 4 S

PORCH FLOOR: On open porch to be composition flooring, blocked off in squares, same on enclosed porch.

30 STUDDING: 2" x 4" spaced 16" O. C.; double studs around all doors, window opening and headers; doubled for all stairs.

INTERIOR FINISHING: All interior finish to be cypress or bass-wood of good quality, including base boards and trimmed for all openings and painted as desired by owner.

DOOR AND DOOR FRAMES: Front door to be of French with side lights; French door from hall to dining-room; French door from hall to living room; French door from living room to open porch; All other doors throughout the house to be 2 x 6 x 6 x 6.

WINDOWS: Rebated sash D H as shown on plans with pockets for weights and pulleys for cords, all white pine.

PORCH POSTS: Built up of colonial design. 10

HARDWARE: Hardware to be standard make; Mortise locks and door hinges, sash lifts, locks, *wights*, pullies, sash cords, cupboards, hardware, coat hooks for all closets, base knobs must be furnished by the general contractors and such other as

HEATING: Heating plant in cellar removed to a suitable place to make connections with flue in open fire-place.

FIRE-PLACE: Open fire place in living room to be of red-hard sarah and Fisher or any other brick that may be desired by the owner; the outside chimney from the ground to be the proper height of roof to be red hard Sarah and Fisher brick; open hearth lined with tile; double flue lining in chimney. 20

PAINTING: All interior and outside work to be painted with two coats of lead and oil, color as desired by Owner. 30

ELECTRIC WIRING: The contractors for this work is to run standard approved wiring to all, outlets as indicated on plans with the necessary wiring capacity. Receptacles to be placed in each room for vacuum cleaners or floor lamps. All electric work to be

approved by the Bureau of Fire Underwriters' Association.

ROOFING: To be of asbestos of the square style.

LAUNDRY: Stationary laundry tubs and concrete floor, if desired by owner.

FLASHINGS: for chimneys to be furnished. Asbestos ridge roll for the ridge and hips shingles for the hips.

10 PORCH CEILING: Porch ceiling sealed with 1/2 x 3/4 strictly clear fir narrow beaded ceiling, tongued and grooved.

SYNOPSIS: Colonial and French design as shown by drawing; the extension on side to be taken back five feet; flushing it with remainder of house; wall between living room and dining room removed; two French doors; porch removed from front and side of house, replacing it with an enclosed porch; porch on other side to be an open porch and latticed with colonial columns; back porch to be torn down, add a new addition to the roof; other side of house to be brought up, making it a square house. Four rooms and bath in front of hall, on second floor with the necessary bath room fixtures, attic steps moved to a suitable place in rear building; front steps moved back a suitable way so as to make the French doors correspond. All plumbing and heating work, all painting inside and out; bay window off; fire place; cornish of French design with a two foot or more over-hang to correspond with the Colonial opening of front door; brackets to steps in front of house and porches; all side walls outside to be cemented and sanded.

20

30

I agree to do the above work and furnish the material required for above work for the sum of Forty-two Hundred Dollars (\$4,200.) to be paid in the following manner:

Three Hundred and Fifty Dollars (\$350.00) upon signing of contract; then the additional sum of Five Hundred Dollars (\$500.00) each week, until completed, balance to be paid within ten days after completion of work.

ANTHONY DEL VECCHIO 10  
Owner

W. D. SPEECE,  
Contractor.

Dated Oct. 26th, 1925

Witness: Stanley Shuey.

STATE OF NEW JERSEY, }  
COUNTY OF ATLANTIC, } ss.

20

WILBER D. SPEECE, of full age, being duly sworn, upon his oath, deposes and says, that deponent is the claimant named in the foregoing mechanic's lien claim; that the above bill of particulars and statement of account is for materials furnished and labor performed by or at the instance of this deponent, the said claimant, in the erection and construction of an addition or improvement to the said building described in the above mechanics' lien claim, as in the above claim described, at the times therein specified; and that the amount as claimed therein, is justly due and owing to this deponent, the said claimant, from the said J. Anthony Del Vecchio, owner.

30

WILBER D. SPEECE.

copy

Sworn and subscribed to before me this fourth day of March, 1926.

(Notary Seal) PHILIP GODFREY,  
Notary Public of N. J.

Summons issued on the within lien claim March 9, 1926 (Circuit Court).

10 Wm. A. BLAIR,  
Clerk.

Filed and docketed March 9, 1926, at 9 A. M.

Wm. A. BLAIR,  
Clerk.

Mechanics' Lien Docket No. 5, page 164.

SUMMONS.

ATLANTIC COUNTY, ss.

THE STATE OF NEW JERSEY TO J. ANTHONY DELVECCHIO:

30 (Seal) You, J. Anthony DelVecchio, owner, are summoned to answer the annexed complaint of Wilber D. Speece, in an action at law in the Circuit Court in and for the County of Atlantic in which the said Wilber D. Speece claims a building lien on a certain

building and lands of said J. Anthony DelVecchio described in said complaint:

And take notice that unless you file your answer to said complaint with the clerk of said court, at Mays Landing within twenty days after service upon you of this writ and the annexed complaint the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, HONORABLE THEODORE W. SCHIMPF, ESQUIRE, Judge of the Circuit Court aforesaid at Mays Landing, aforesaid, this ninth day of March, A. D. 1926.

Wm. A. BLAIR,  
Clerk.

CARLTON GODFREY,  
Wm. I. GARRISON,  
Attorneys for Plaintiff.

COMPLAINT.

ATLANTIC COUNTY CIRCUIT COURT.

WILBER D. SPEECE,  
Plaintiff,  
v.  
J. ANTHONY DELVECCHIO,  
Defendant.

Action at Law.  
On Mechanic's Lien.  
Complaint.

The plaintiff, Wilber D. Speece, of Delanco, New Jersey, says:

1. At the times hereinafter stated, defendant, J. Anthony DelVecchio, was the owner of a lot of land hereinafter particularly described having an estate in fee simple therein, which land is described as follows:

All that certain lot, tract or parcel of land and premises located in Hammonton, in the County of Atlantic and State of New Jersey, and particularly bounded and described as follows:

10 BEGINNING at the South corner of Horton and Pleasant Streets, thence extending (1) Southwestwardly by the southeast side of Pleasant Street one hundred feet to land of one Sordan; thence (2) southeastwardly by the northeast line of said land of Sordan one hundred feet; thence (3) northeastwardly parallel with Pleasant Street, one hundred feet to the southwest side of Horton Street; thence (4) by the same northwestwardly one hundred feet to the place of beginning.

20 2. That said Wilber D. Speece, this claimant and plaintiff, at the special request of the defendant, J. Anthony DelVecchio, sold and delivered the materials described and furnished the labor designated in the bill of particulars and statement of account annexed hereto and by this reference thereto made a part hereof, at the prices named in said statement and upon the times indicated thereupon, which statement also gives credit for all payments made there-  
30 upon and all deductions that ought to be made therefrom and exhibiting the balance justly due to the claimant and plaintiff, the said Wilber D. Speece, from the said J. Anthony DelVecchio, the defendant, which said materials were furnished and which said labor was performed for the erection and construction of said additions and improvements to said building.

3. That there is due to the plaintiff, Wilber D. Speece, from the defendant, J. Anthony DelVecchio, the sum of \$5,312.60 besides interest upon said sum from January 14th, 1926, to March 4th, 1926, amounting to \$45.37 making a total of \$5,357.97, no part of which debt of \$5,357.97 having been paid, the said sum of \$5,357.97 is now justly due and owing, as aforesaid.

4. The said debt is a lien upon said building and land by virtue of the provisions of an act of the Legislature of the State of New Jersey entitled "An act to secure to mechanics and others payment for their labor and materials in erecting any building" (revision of one thousand eight hundred and ninety-eight) and the several supplements thereto and acts amendatory thereof.

5. The original building was constructed of wood and consisted of a two-story residence or bungalow to which an extension, addition or improvement was added on the side for a distance of five feet, flushing it with the remainder of the house; the wall between the living room and dining room was removed; the porch was removed from the front and side of the house, replacing it with an enclosed porch; and an additional porch was added also, being an open porch, latticed and with Colonial columns; the back porch was torn down and the roof extended; four rooms and bath were partitioned off in the front of the house on the second floor, and a bathroom installed with necessary bathroom fixtures; the attic steps were moved to the rear of the building and numerous other improvements were made to the house and to the addition or extension constructed in compliance with the orders and contract of the

owner, J. Anthony DelVecchio, as will more fully appear in the bill of particulars and statement of account attached hereto.

6. The said J. Anthony DelVecchio has an estate in fee simple in said land and premises and upon which land and premises plaintiff, Wilber D. Speece, claims a lien under the statute aforesaid and above mentioned, for the said full sum of \$5,357.97 besides interest upon said sum from March 4th, 1926.

Plaintiff demands as damages the said sum of \$5,357.97 with interest and costs.

CARLTON GODFREY,  
WM. I. GARRISON,  
Attorneys for Plaintiff.

20 J. ANTHONY DEL VICCHIO,  
TO WILBER D. SPEECE Dr.

For the erection and construction of an addition to a two-story residence located at the corner of Horton and Pleasant Streets, Hammonton, Atlantic County, New Jersey, as per contract dated October 26, 1925, between J. Anthony Del Vicchio, Owner, and Wilber D. Speece, Contractor (copy of which contract is attached hereto and by this reference thereto made a part hereof) ..... \$4,200.00

30 For the erection and construction of the following Extras not included in the above contract, but ordered per-

sonally by said J. Anthony Del Vicchio of Wilber D. Speece, viz:

Altering laundry, kitchen and office location; putting in new partitions in laundry; closing up door in hall; cutting door from kitchen to dining-room; cutting in window for bath-room.....	\$800.00	10
Cutting and laying sub joice and laying sub floor in kitchen and laundry.....	275.00	
4486 sq. feet composition flooring at 80¢ per foot.....	388.80	
New window put in side of house after house was sheathed and weather-boarded .....	90.00	
Making of sewing-room second floor front after house was laid out and drawn, taking part of hallway .....	165.00	20
Putting closet full length of bed rooms .....	170.00	
Putting on Celotex instead of lath throughout the house	600.00	
Cutting in opening for shower bath, relining of same; knob, concealing of pipes .....	130.00	30
Built in shower bath and shower plumbing .....	300.00	
Change to Colonial siding.....	1,000.00	
Copper flashings .....	60.00	
Change of location and sun parlor from one side to the		

other and open porch; new  
 French doors cut in living-  
 room instead of dining-room  
 change of fire brick from red  
 brick to Winslow brick..... 400.00  
 Replacing of old toilet fixtures  
 in laundry ..... 130.00  
 Tiles bath-room sides ..... 400.00  
 \_\_\_\_\_ 4,908.80

10

TOTAL CHARGES ..... \$9,108.80  
 Total charges brought forward ..... \$9,108.80

Less the following credits and deductions:

Received from J. Anthony Del  
 Vicchio

October 26, 1925, by check \$350.00  
 November 6, " " " 500.00  
 " 17, " " " 350.00  
 December 1, " " " 350.00  
 20 " 9, " " " 300.00  
 " 11, " " cash 146.20  
 " 22, " " check 500.00  
 January 6, 1926, " " 500.00

\_\_\_\_\_ \$2,996.20

30 Deduction or credit allowed  
 by Wilber D. Speece, Con-  
 tractor, to J. Anthony Del  
 Vicchio, Owner, by reason  
 of the fact that work upon  
 the house aforesaid has been  
 discontinued because of a  
 circumstance created by the  
 Owner and outside of the  
 control of the Contractor,  
 this item being the whole

total cost necessary to com-  
 plete the work contracted  
 for as above ..... 800.00

\_\_\_\_\_ 3,796.20

Balance due January 14, 1926 ..... \$5,312.60  
 Interest upon \$5,312.60, from January  
 14, 1926, to March 4, 1926 ..... 45.37

10

Amount justly due from the Owner afore-  
 said to this Claimant on March 4, 1926 \$5,357.97

SPECIFICATIONS

of the work and material required in the re-model-  
 ing and completion of a house located at corner Hor-  
 ton and Pleasant Streets, Hammonton, New Jersey,  
 for J. A. Del Vecchio of the City of Philadelphia,  
 State of Pennsylvania.

W. D. Speece, Contractor and Builder, of 20  
 Delanco, N. J.

GENERAL: All work under these specifications  
 must be done in a thorough workmanlike  
 manner and subject to the approval of the  
 Owner.

The contractors for this work must pay for  
 all permits required for the successful com-  
 pletion of the work, and meet all require-  
 ments of the Officers.

30 There shall be no lien or right to claim  
 any lien against the building or its site for  
 labor or materials furnished by any sub-  
 contractor or material man, nor shall there  
 be any claim for such labor or materials  
 on the Owner, other than the claim of the  
 general contractor.

Before any final settlement is made the general contractors shall file with the Owner a release of liens with affidavits attached certifying to its correctness.

PLASTER: All new partitions, side walls and ceilings to be lathed and plastered.

CARPENTER WORK, LUMBER AND LABOR: All work to be performed in a thorough and workmanlike manner; Lumber to be of good quality, suitable for the purpose used.

10

MILL-WORK: All framing to be of yellow pine or fir.

PORCH-JOIST: 2 x 8 Y. P.

FLOORING: Front and back room upstairs, hard wood; dining room and living room, hard wood floors; stair treads and risers to be of hard wood; bath room composition flooring; kitchen Y. P. No 1; laundry Y. P. No. 1; Hall on first floor and room to be used as office, hard wood.

20

SHEATHING: to be 1 x 10 S 4 S

PORCH FLOOR: On open porch to be composition flooring, blocked off in squares, same on enclosed porch.

STUDDING: 2" x 4" spaced 16" O. C.; double studs around all doors, window opening and headers; doubled for all stairs.

INTERIOR FINISHING: All interior finish to be cypress or bass-wood of good quality, including base boards and trimmed for all openings and painted as desired by owner.

30

DOOR AND DOOR FRAMES: Front door to be of French with side lights; French door from hall to dining-room; French door from hall to living room; French door from liv-

ing room to open porch; All other doors throughout the house to be 2 x 6 x 6 x 6.

WINDOWS: Rebated sash D H as shown on plans with pockets for weights and pulleys for cords, all white pine.

PORCH POSTS: Built up of colonial design.

HARDWARD: Hardware to be standard make; Mortise locks and door hinges, sash lifts, locks, *wights*, pullies, sash cords, cupboards, hardware, coat hooks for all closets, base knobs must be furnished by the general contractors and such other as

10

HEATING: Heating plant in cellar removed to a suitable place to make connections with flue in open fire-place.

FIRE-PLACE: Open fire place in living room to be of red-hard sarah and Fisher or any other brick that may be desired by the owner; the outside chimney from the ground to be the proper height of roof to be red hard Sarah and Fisher brick; open hearth lined with tile; double flue lining in chimney.

20

PAINTING: All interior and outside work to be painted with two coats of lead and oil, color as desired by Owner.

ELECTRIC WIRING: The contractors for this work is to run standard approved wiring to all, outlets as indicated on plans with the necessary wiring capacity. Receptacles to be placed in each room for vacuum cleaners or floor lamps. All electric work to be approved by the Bureau of Fire Underwriters' Association.

30

ROOFING: To be of asbestos of the square style.

LAUNDRY: Stationary laundry tubs and concrete floor, if desired by owner.

FLASHINGS: for chimneys to be furnished. Asbestos ridge roll for the ridge and hips shingles for the hips.

PORCH CEILING: Porch ceiling sealed with  $\frac{1}{2}$  x  $\frac{3}{4}$  strictly clear fir narrow beaded ceiling, tongued and grooved.

10 SYNOPSIS: Colonial and French design as shown by drawing; the extension on side to be taken back five feet; flushing it with remainder of house; wall between living room and dining room removed; two French doors; porch removed from front and side of house, replacing it with an enclosed porch; porch on other side to be an open porch and latticed with colonial columns; back porch to be torn down, add a new addition to the roof; other side of house to be brought up, making it a square house. Four rooms and bath in front of  
20 hall, on second floor with the necessary bath room fixtures, attic steps moved to a suitable place in rear building; front steps moved back a suitable way so as to make the French doors correspond. All plumbing and heating work, all painting inside and out; bay window off; fire place; cornish of French design with a two foot or more over-hang to correspond with the Colonial opening of front door; brackets to steps in front of house and porches; all side walls  
30 outside to be cemented and sanded.

I agree to do the above work and furnish the material required for above work for the sum of Forty-two Hundred Dollars (\$4,200.) to be paid in the following manner:

Three Hundred and Fifty Dollars (\$350.00) upon signing of contract; then the additional sum of Five Hundred Dollars (\$500.00) each week, until completed, *balance* to be paid within ten days after completion of work.

ANTHONY DEL VECCHIO  
Owner

W. D. SPEECE,  
Contractor.

Dated Oct. 26th, 1925

Witness: Stanley Shuey.

10

I hereby deputize and appoint John B. Rubba to serve the within writ. Witness my hand and seal this 11th day of March, 1926.

HOWARD R. CLOUD (L. S.)  
*Sheriff of Atlantic Co.*

20

Duly served within summons and complaint March 11th, 1926, personally on J. Anthony Del Vecchio, on Bellevue Avenue, in front of Sugar Bowl Store, Hammonton, Atlantic County, New Jersey.

HOWARD R. CLOUD,  
*Sheriff,*

By JOHN B. RUBBA,  
*Special Deputy Sheriff.*

30

Sheriff's fees \$5.22

Received March 9, 1926. Sheriff.

Filed March 19, 1926, at 9 A. M.

WILLIAM A. BLAIR,  
*Clerk.*

ANSWER.

ATLANTIC COUNTY CIRCUIT COURT.

10 WILBUR D. SPEECE,

Plaintiff,

v.

J. ANTHONY DELVECCHIO,

Defendant.

Action at Law.  
On Mechanic's Lien.  
Answer.

20 The defendant, J. Anthony DelVecchio, answering the plaintiff's complaint filed herein, says:

1. He denies paragraph 1 of plaintiff's complaint and says that said land is owned by him and his wife, Mary C. DelVecchio, jointly, as an estate by the entirety.

2. He denies paragraph 2 of plaintiff's complaint.

30 3. He denies paragraph 3 of plaintiff's complaint.

4. He denies paragraph 4 of plaintiff's complaint.

5. He denies paragraph 5 of plaintiff's complaint.

6. He denies paragraph 6 of plaintiff's complaint.

FIRST DEFENSE.

The said building and land are not, nor is either of them, liable to lien for the alleged debt.

SECOND DEFENSE.

All the materials mentioned in plaintiff's complaint and enumerated in the bill of particulars attached thereto, were not delivered to nor used in the erection of the building on the lands of the defendant. 10

THIRD DEFENSE.

Plaintiff has not complied with all of the terms and provisions of the act entitled, "An act to secure to mechanics and others payment for their labor and materials in erecting any building (revision of 1898)" and the supplements thereto and amendments thereof which would entitle them to a special lien and judgment against the lands and building of defendants. 20

FOURTH DEFENSE.

The lien claim upon which this action is based was not filed in the manner required by the statute in such case made and provided. 30

FIFTH DEFENSE.

The bill of particulars attached to said lien claim and to the complaint filed herein contains wilful and

fraudulent mis-statements of the matters directed to be inserted therein by the statute in such case made and provided.

SIXTH DEFENSE.

The contract upon which plaintiff bases his right to lien and judgment has not been completely performed by him.

SEVENTH DEFENSE.

The debt for which plaintiff claims judgment and lien is not yet due.

WM. ELMER BROWN, JR.,  
*Attorney for Defendant.*

20 Filed March 31, 1926 at 2 P. M.

WILLIAM A. BLAIR,  
*Clerk.*

REPLICATION.

ATLANTIC COUNTY CIRCUIT COURT.

WILBUR D. SPEECE,	} Plaintiff,	Action at Law.	10
v.			
J. ANTHONY DELVECCHIO,	} Defendant.	On Mechanic's Lien.	
			Replication.

Plaintiff denies the affirmative allegations in defendant's answer and joins issue on the said answer. 20

CARLTON GODFREY,  
WILLIAM I. GARRISON,  
*Attorneys of Plaintiff.*

Filed April 19, 1926, at 9 A. M.

WILLIAM A. BLAIR,  
*Clerk.*

ORDER FOR JUDGMENT.  
ATLANTIC COUNTY CIRCUIT COURT.

10 WILBUR D. SPEECE,  
Plaintiff, )  
v. ) Action at Law.  
J. ANTHONY DELVECCHIO, ) On Mechanic's Lien.  
Defendant. ) Judgment.

20 This action having been tried before Judge William H. Smathers with a jury in the presence of counsel and the respective parties on November 9th, 1926, and the jury having returned a verdict in favor of the plaintiff for three thousand nine hundred seventy-six dollars and thirty-three cents (\$3,976.33) damages; it is ordered that a general (not special) judgment final be entered in favor of the plaintiff, Wilbur D. Speece an dagaainst the defendant, J. Anthony DelVecchio, for the sum of three thousand and nine hundred seventy-six dollars and thirty-three cents (\$3,976.33) and plaintiff's costs to be taxed.

WM. H. SMATHERS,  
Judge.

30 On motion of William I. Garrison, Esq., attorney for plaintiff, rule entered this ninth day of November, 1926.

Filed and entered November 10, 1926, at 9 A. M.  
WILLIAM A. BLAIR,  
Clerk.

COUNTY CLERK'S MINUTES.  
ATLANTIC COUNTY CIRCUIT COURT.

October Term—1926.

18026.

WILBUR D. SPEECE,  
Plaintiff, ) On Mechanic's Lien. 10  
v. ) On Verdict.  
J. ANTHONY DELVECCHIO, ) Action at Law.  
Defendant. ) Wm. I. Garrison,  
Attorney.

Judgment entered November 10, 1926, at 9 A. M.  
Damages \$3,976.33 20  
Costs 50.70  
Total \$4,027.03

This action was tried before Judge Wm. H. Smathers with a jury in the presence of counsel for the respective parties on November 9th, 1926.

This cause having been heard and submitted to the jury they returned their verdict in favor of the plaintiff and against the defendant.

Whereupon, it is ordered that the plaintiff, Wilbur 30  
D. Speece, recover of the defendant, J. Anthony DelVecchio, the sum of three thousand nine hundred seventy-six dollars and thirty-three cents damages and fifty dollars and seventy cents, costs of suit.

WILLIAM A. BLAIR,  
Clerk.

Execution issued November 10, 1926.

Notice of appeal filed January 21, 1927.

WILLIAM A. BLAIR,  
Clerk.

County Circuit Judgment Book No. 14, page 509.

RULE TO SHOW CAUSE.

10

ATLANTIC COUNTY CIRCUIT COURT.

WILBER D. SPEECE,

Plaintiff,

v.

20

J. ANTHONY DELVECCHIO,  
Defendant.

Action at Law.  
On Mechanic's Lien.  
Rule to Show Cause.

Application to this end having been made within the time required by law.

30

It is on this twelfth day of November, 1926, on motion of Wm. Elmer Brown, Jr., attorney of defendant, ordered that the plaintiff show cause before the Court at the courtroom, Guarantee Trust Building, Atlantic City, New Jersey, on the sixth day of December, next, at the hour of ten o'clock in the forenoon, why the verdict of the jury should not be set aside and a new trial awarded.

It is further ordered that the allowance of this

rule shall not be deemed as a waiver of the exceptions so taken at the trial but that each and every of the exceptions so taken be and they hereby are expressly reserved to the defendant to the same effect as though each and every exception so taken was specifically set out herein, the intent and purpose of this rule being to permit the defendant to prosecute an appeal and argue all exceptions taken in the event that this rule should be discharged.

And it is further ordered that until the further order of the Court execution and all proceedings done will be stayed and a copy of this rule, which need not be certified, be served upon the plaintiff or his counsel within days from the date hereof.

Let this rule be entered in the minutes.

WM. H. SMATHERS,  
Judge.

Filed and entered November 13, 1926, at 9 A. M.

WILLIAM A. BLAIR,  
Clerk.

20

30

ORDER.

ATLANTIC COUNTY CIRCUIT COURT.

10 WILBUR D. SPEECE, }  
 Plaintiff, }  
 v. } Action at Law.  
 J. ANTHONY DELVECCHIO, } On Mechanic's Lien.  
 Defendant. } Order.

20 This matter coming on to be heard on rule to show cause why the judgment hereinbefore entered should not be set aside and new trial granted, in the presence of William I. Garrison, Esquire, attorney for plaintiff, and Wm. Elmer Brown, Jr., Esquire, attorney for defendant, and after listening to the arguments of counsel thereon and being of the opinion that said verdict should not be disturbed;

30 It is on this 18th day of January, A. D., 1927, ordered that said rule to show cause be and the same hereby is dismissed with costs, subject, however, to defendant's right to prosecute an appeal and argue all exceptions taken at the trial and expressly reserved to said defendant in said rule to show cause.

WM. H. SMATHERS,  
 Acting C. C. Judge.

Filed and entered January 19, 1927, at 9 A. M.

WILLIAM A. BLAIR,  
 Clerk.

NOTICE AND GROUNDS OF APPEAL.

ATLANTIC COUNTY CIRCUIT COURT.

WILBUR D. SPEECE, }  
 Plaintiff, } Action at Law. 10  
 v. } On Mechanic's Lien.  
 J. ANTHONY DELVECCHIO, } Notice and Grounds  
 Defendant. } of Appeal.

To William I. Garrison, Esq., Attorney of Plaintiff, 20  
 or to whom it may concern:

Sir:

Please take notice that the defendant in the above entitled cause appeals to the Supreme Court of New Jersey from the whole of the judgment in this cause on the following grounds, to wit:

1. Because the Court permitted witness Wilbur D. Speece, to answer the following question:  
 "Was that contemplated in your first 30 sketch?"

2. Because the Court refused to permit witness, Wilbur D. Speece, to answer the following question on cross-examination:

“Do you know what your labor cost was on this operation from the time you began until the time you quit?”

3. Because the Court refused to grant the motion of the defendant, J. Anthony DelVecchio, for a non-suit in his favor on the ground that the evidence did not support the allegations of plaintiff's complaint respecting his claim for “extras” or, in other words, the evidence and the allegations of the complaint were at variance in that respect.

4. Because the Court refused to grant the motion of the defendant, J. Anthony DelVecchio, for a non-suit upon the ground that the bill of particulars attached to plaintiff's complaint did not satisfy the requirements of the statute in that case made and provided.

5. Because the Court refused to grant the motion of the defendant, J. Anthony DelVecchio, for a non-suit upon the ground that plaintiff had not shown a substantial performance by him of the contract upon which his action was based.

6. Because the Court refused to direct a verdict in favor of the defendant.

7. Because the Court charged the jury as follows:

“On the other hand, if the plaintiff ceased work at the request of the defendant, then, of course, the plaintiff would be entitled to recover any balance due him on the contract for the work performed by him, after making a reasonable allowance to the defendant for whatever cost he may have laid out in the completion of the contract for the plaintiff.”

8. Because the Court charged the jury as follows:

“The next question is whether or not there was an independent agreement made between the defendant and the plaintiff whereby the defendant requested certain extra work to be performed by the plaintiff.”

9. Because the Court charged the jury as follows:

“If the plaintiff has satisfied you by the greater weight of the evidence, by a fair preponderance of the evidence, that there was extra work done; that the extra work was done by him, not contemplated by the plans and specifications, at the request of the defendant, then as a matter of law the defendant is required to pay to the plaintiff for that extra work all of its reasonable value. It becomes a fact question for you ladies and gentlemen, to determine whether or not extra work was ordered by the defendant. If it was ordered, was it performed by the plaintiff? And if it was performed, what is a reasonable compensation to the plaintiff for the performance of the extra work?”

10. Because the Court charged the jury as follows:

“If it was partially performed then as a matter of law the plaintiff is entitled to recover the fair compensation or fair value of whatever partial performance he did on these extra jobs that he contends the defendant ordered him to perform.”

11. Because the Court refused defendant's request to charge the jury as follows:

10 "Where a contract is entire, the complete performance is a condition precedent to the payment of the price, and no recovery can be had for a partial performance, unless the parties, by mutual consent, have agreed to sever the contract, or the defendant has himself repudiated it, or the plaintiff is justified by some fault of the defendant in abandoning it."

12. Because the Court refused defendant's request to charge the jury as follows:

"The promise of DelVecchio to make the installment payments are entirely independent of the promise of the contractor, Speece, to perform and complete the work."

13. Because the Court refused defendant's request to charge the jury as follows:

20 "The failure of DelVecchio to make payment as provided in the contract was not in itself an abandonment of the contract by him."

14. Because the Court refused defendant's request to charge the jury as follows:

"The covenant to complete the work and the covenant to make monthly payments are independent of each other."

30 15. Because the Court refused defendant's request to charge the jury as follows:

"If Speece has not substantially complied with the terms of the contract he cannot recover."

16. Because the Court refused defendant's request to charge the jury as follows:

"The completion of the building by DelVecchio after Speece had left the work, is neither presumptive nor conclusive evidence of such acceptance of Speece's work as would entitle Speece to recover in this suit."

17. Because the Court refused defendant's request to charge the jury as follows:

10 "Before Speece can recover in this suit he must establish as a fact that the work and materials for which he claims payment were actually furnished."

18. Because the Court refused defendant's request to charge the jury as follows:

"The work and materials cannot be considered as furnished until the whole contract is completed."

20 Wm. Elmer Brown, Jr.,  
Attorney for Defendant.

[ENDORSED]

Due and legal service of the within notice and grounds of appeal acknowledged this 20th day of January, A. D. 1927.

30 Carlton Godfrey,  
Wm. I. Garrison,  
Attys. for Plaintiff.

Filed January 21, 1927, at 9 A. M.

WILLIAM A. BLAIR,  
Clerk.

## TESTIMONY.

## ATLANTIC COUNTY CIRCUIT COURT.

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10 WILBUR D. SPEECE,  
*Plaintiff,* }  
 v. } Action at Law.  
 J. ANTHONY DELVECCHIO,  
*Defendant.* }

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20 APPEARANCES:  
 CARLTON GODFREY, Esq., and WM. I. GARRISON, Esq.,  
 for plaintiff.  
 WM. ELMER BROWN, JR., Esq., for defendant.

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The above entitled case was tried November 8, 1926,  
 Before HON. WM. H. SMATHERS, Judge, and a jury.

---

30 (Mr. Garrison opened the plaintiff's case to the  
 jury.)  
 (Mr. Brown opened the defendant's case to the  
 jury.)

Mr. Garrison: I offer the contract.

(The paper offered is received in evidence and  
 marked as an exhibit for the plaintiff P1.)

Mr. Brown: Will you admit that that contract is  
 on file?

10

Mr. Garrison: Yes. It is admitted that the con-  
 tract, Exhibit P1, has been filed in the County  
 Clerk's office at Mays Landing. I think you said  
 you would admit that the description set forth in  
 the lien claim is the property in question.

Mr. Brown: I said I would produce the deed for  
 you.

Mr. Garrison: I offer in evidence the deed, S. O. 20  
 Swan, et ux to Anthony DelVecchio et ux.

(The paper offered is received in evidence and  
 marked as exhibit for the plaintiff P2.)

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WILBER D. SPEECE, the plaintiff, being called as a  
 witness in his own behalf, duly sworn, was examined  
 and testified as follows:

30

Direct examination.

By Mr. Garrison:

Q. Mr. Speece, you are the plaintiff in this suit?

A. Yes, sir.

- Q. Where do you live?  
 A. Delanco.  
 Q. And you know Mr. DelVecchio, the defendant?  
 A. Yes, sir.  
 Q. And did you have some business with him?  
 A. Yes, sir.  
 Q. What sort of business was that?  
 A. Remodeling an old house.  
 Q. Now, you had a contract?  
 10 A. Yes, sir.  
 Q. And the contract has been offered in evidence. I want to handle this so that if you want to refer to it you can do so. (Hands the contract to the witness) Now, when you entered into the contract to remodel this old house, did you make any plans?  
 A. No, sir.  
 Q. Now, what did you do?  
 A. Just came there and looked it over; went down and looked over the house; yes, sir.  
 20 Q. And agreed on a price to remodel it?  
 A. Yes, sir.  
 Q. You had specifications which are embraced in the contract?  
 A. Yes, sir.  
 Q. And that is all you had?  
 A. Yes, sir.  
 Q. Now, did you undertake to do this work according to this contract?  
 A. Yes, sir; I had my architect draw a pencil  
 30 sketch on the back of a calendar, the work that we were to do, and he is here now.

Mr. Brown: Do you want it? (Producing sketch.)

Q. I show you what purports to be a pencil sketch of the work that you were to do and ask you to look

- them over and see if they are the ones that you referred to?  
 A. This is the second plan, not the first.  
 Q. These are the second plans?  
 A. Not the first; no, sir.  
 Q. How about the first plans? That is what I am talking about.  
 A. The first plan was left in charge of Mr. Steelman, and it was torn up and thrown away or got destroyed or something after that plan was made. 10  
 Q. But was the first plan you mentioned—was the house built according to those plans, the first plans?  
 A. According to the first plans?  
 Q. Yes.  
 A. Only enlarged afterwards according to those plans.  
 Q. Now, where did you—why did you draw second plans?  
 A. Mr. DelVecchio wanted a house like Mr. Ruberton's. That is in Hammonton. He took Mr. Steelman and myself down and showed us the house and then we altered the plans and made that blueprint. 20  
 Q. Was that after you entered into an original contract?  
 A. Yes.  
 Q. And had you started on the work before these were drawn?  
 A. Yes, sir.  
 Q. Were these plans which I showed you a moment ago and which Mr. Brown produced—were they reduced to a blueprint? 30  
 A. Yes, sir.  
 Q. And have you the blueprint here?  
 A. Yes, sir.  
 Q. (Witness is shown what purports to be a blueprint of a subsequent arrangement made after the

original contract was made and is asked if that is the blueprint he referred to.)

A. Yes, sir.

Q. Is that the blueprint from which this house was finally built?

A. Yes, sir.

Mr. Garrison: Do you want to look at this, Mr. Brown? I offer it in evidence.

10

(Paper offered is received in evidence and marked as an exhibit for the plaintiff P3.)

Q. Now, did these second plans embrace the first plans?

A. The second plans embraced the first, yes, sir.

Q. Then the only difference was that it was enlarged and there were extras; is that the idea?

A. Yes, sir.

20 Q. Now, on the original plans, that is, the plans that embraced the \$4200, what difference, if any, was made about the laundry, the kitchen and the office? Explain that to the jury.

A. The laundry is moved over here. The kitchen is moved in to here. The laundry is moved over on this side. There is a partition goes across in through the laundry. We had a door in here. We closed up that door and to get into the dining room from the kitchen we had to cut off the angle and make a three-  
30 cornered door so we could enter into this portion here. We did that on the first plan and it was nothing at all compared to this. It was a pencil sketch. Then we drew this second sketch and it was what he wanted, after we had seen Ruberton's house and after we had that all done he wanted it all changed around and we changed it around to suit him.

Q. Did you have any talk with him about what that would cost?

A. Yes. He was there at the time that I told him I couldn't build that kind of a house for \$4200, and I told him the cost and the price standing right in the place.

Q. Did you have any—

A. No written agreement, no, sir, only verbal.

Q. Did you have any verbal agreement what that would cost? 10

A. Yes, sir, I told him it would cost \$800.

Q. And what did he say?

A. "Go ahead and build it," and I built it.

Q. Did you build it?

A. My men did.

Q. You were the contractor?

A. Yes.

Q. Now, when I say, "you" I mean you and your men. 20

A. Yes, sir.

Q. Then you had agreed on \$800 and you did the work?

A. Absolutely.

Q. Now, you have another item in cutting and laying sub-joists and laying sub-floor in kitchen and laundry. Explain that to the jury.

A. My contract called for number one yellow pine flooring in the kitchen, dining room and office. The gentleman wanted it changed to composition floor-  
30 ing. To get the composition floor we had to make a beam joist and we hewed them off and we put a separate floor underneath it so we could hold the composition floor in there.

Q. Was that contemplated in your first sketch?

Mr. Brown: I object. The contract is in evidence and the jury can draw the conclusion as to what was contemplated, as to whether it was contemplated or not.

The Court: He can state whether the contract covered it, not contemplates it.

Mr. Brown: I say again that is the province of  
10 the jury. Our claim is that a great deal of the work he is doing here is contemplated in his contract and his conclusion as to whether it is or not, is not competent evidence.

The Court: As to whether or not a thing is actually covered by the contract he may testify, as to whether it is extra or contract.

Mr. Brown: Allow me an exception.

20

Q. Was that contemplated in your first sketch? Was the work that you just described for which you charged \$275—was that contemplated in that original sketch?

A. No, sir.

Mr. Brown: I object.

The Court: I sustain the objection to the form of  
30 the question.

Mr. Garrison: I will start over.

Q. Was that an extra?

A. Yes, sir.

Q. Did you have any talk with Mr. DelVecchio about that extra?

A. When Mr. DelVecchio wanted a composition floor put in I said, "Del, I can do that stuff, and it will cost you exactly \$275."

Q. And what did he say?

A. "Go ahead and do it."

Q. And did you go ahead and do it?

A. As far as I could, yes. The composition flooring is not in.

Q. But the work you did—

A. The work is all in, yes.

10

Q. And the work you are charging for is in?

A. Is in.

Q. You are not making any charge, are you, for the flooring?

A. No, sir.

Mr. Brown: Mr. Garrison, I think the witness ought to testify, not you.

Q. Now, you have another item of \$90 for a new  
20 window. Now, will you point out to the jury where that new window was?

A. This office is in the center here. It was moved over to where the laundry is. The laundry was moved over on this side. He wanted a new window cut on this side and we cut it in after, and that was weather-boarded.

Q. Did you agree on what that should be?

A. Yes.

Q. How much?

30

A. Ninety dollars.

Q. And was that an extra?

A. Yes, sir.

Q. Now, your next item is \$165 for the making of a sewing room.

A. On the second floor after the house was laid out and drawn.

Q. Talking about the hallway, will you explain that to the jury?

A. Yes, sir. Our first pencil sketch, our bath room was front. On this plan we moved it back to this present location. He wanted a sewing room. We had to put a sewing room in here, partition this off, take that partition off and bring it around just as that. This is your sewing room and this is your bathroom.

10 Q. Well, did you have any conversation with him about that change?

A. I told him it would cost him \$165.

Q. What did he say?

A. "Put it in."

Q. Now, your next item is "Put in closet full length of bedroom." Now, did you do that?

A. The bedroom here—and he wanted a double closet. We put a closet the full length of this room with an opening from here and an opening from  
20 there. The same on that other side.

Q. Did you have any talk with him about the price?

A. Yes, sir. I told him it would cost—I told him what it would cost him.

Q. What did you tell him?

A. \$170.

Q. Your next item is putting on celotex instead of lath. What is the difference between celotex and lath?

30 A. Mr. DelVecchio had been in the south and he seen this celotex.

Mr. Brown: I object. The answer is not responsive.

Q. (Repeated by the stenographer.) Your next item is putting on celotex instead of lath. What is the difference between celotex and lath?

A. Why, a whole lot of difference. Celotex—

Mr. Brown: I ask that that be stricken out and the witness instructed to answer the question indirectly.

Q. What is the difference between celotex and lath? 10

A. Well, one is a composition board and the other is lath.

Q. Now, what was contemplated in the beginning?

A. Lath and plaster—

Mr. Brown: I object to that, if your Honor please. The contract speaks for itself.

Mr. Garrison: But this contract had changed and 20 new plans drawn and everything.

Q. Well, was lath put on this house or celotex?

A. The first house—we left a portion of it stand, over half of it that was lined with lath and plaster. We worked around that so we would not have to use or make any marks or lose any of the lath and plaster that was on the old portion of the house. We took the nails out, cleaned them off, and laid it aside to use in the construction of this other one. 30 Then Mr. DelVecchio wanted celotex and I said in the presence of Mr. Lang, the celotex man,—I said: "I can't do that unless you pay me six hundred dollars." Mr. Lang told him the difference of it. He said: "I have been south and I know what it is and I want it on," and I put it on, but no plaster.

Q. Did you agree on the price?

A. \$600.

Q. Your next item is \$120 for cutting an opening for shower baths, relining of same, knob, concealing of pipes for a built-in shower and bath. Now, will you state to the jury what that was for, what that change was for?

A. In this bathroom here he wanted a shower-bath. The shower would come up over the end and  
10 we had to make a closet there for a spigot to control the shower-bath, and we did it; and I told Mr. DelVecchio "That will cost you \$125."

Mr. Brown: How much?

The Witness: \$125.

Q. Well, did you do that work?

A. Yes, sir.

20 Q. And is that work mentioned in the original contract?

A. No, sir; no shower-bath.

Q. As I understand, you didn't put a shower-bath in?

A. No, sir.

Q. You only got ready for it?

A. I only got ready for the shower-bath. He had all the extra work given to Mr. Grillo to put in his shower-bath himself.

30 Q. You hadn't anything to do with it?

A. No, sir.

Q. Now, your next charge is for Colonial siding. How did that come about?

A. The old house had six-inch cedar siding and Mr. Steelman was there and he said: "I want Colonial siding made like Ruberton's house, Jimmy

Ruberton's." I said: "Well, do you realize what that is going to cost you?" He said: "No, I don't, but I want it just exactly how that house is made." I said: "It will cost you a thousand dollars." He said: "I don't care what it will cost. Go put it on." And I put it on.

Q. And that is a thousand dollars?

A. Yes, sir.

Q. And that was agreed?

A. Yes, and we took the old siding off the other  
10 portion of the house that was standing, took the six-inch siding off and put that on.

Q. Could your old siding have been left on there?

A. Sure, you could use it on there and finish the old house with the plans.

Q. Would that have been a credit to you?

A. Not for that kind of a house; no, sir.

Q. I mean if you left the old siding on would it have assisted you in any way?

A. Sure, it would have assisted me in money, in  
20 money consideration. It would not have cost anywhere near to what the plans of the house was as it was standing there. Over half of the house was standing and we had to rip that off.

Q. You were talking about laths a while ago. When you put the celotex on did you have to take some of the lath off that you left on there and used?

A. Absolutely. The whole half house we had to take off, upstairs and downstairs.

Q. I see a charge here for copper flashing. What  
30 is that for?

A. In putting on a roof, on asbestos roofing, he wanted copper flashing to come down and all around the chimney, and we put it on.

Q. Does your contract and specification say anything about copper flashing?

A. Not for copper flashing.

Q. And did you have any talk with him about what the cost would be?

A. I told him it would cost him \$60. I think Mr. DelVecchio went and paid for some of that flashing himself, or some of the copper but I had bought three bundles myself and took it down and gave it to Mr. Steelman.

Q. And the charge was \$60?

10 A. Yes, sir.

Q. Well, if he bought some of that copper flashing, is he entitled to a credit?

A. He is entitled to what he bought, but not what we bought and put on. We have to put it on and the labor is just the same. Copper is thirty-seven cents a pound.

Q. Now, your next charge is a change of location of sun parlor from one side to the other side; also an open porch.

20 A. Yes, sir.

Q. New French doors cut in living room instead of dining room; change of fire brick from red brick to Winslow brick.

A. Yes, sir.

Q. That is \$400. I wish you would explain that to the jury.

A. At first the sun parlor was over here in the yard. This was over on this side. The sun couldn't get over on the house side. He wanted it changed and we put it over, just as you see it, like that.

30 Q. Would it cost any more to put it on one side than the other?

A. Yes, after we had started.

Q. Oh, you had started?

A. Yes, sir. Now, the Winslow fireplace comes up in here, and I went to Mr. Jeannette, a contractor in Hammonton, and he told me—

Mr. Brown: I object.

The Witness: Well, he said—

Mr. Brown: I object.

Q. You cannot tell what he told you. Well, did you have any conversation with him about what it would cost?

A. Yes.

Q. And did you agree upon a price? 10

A. Yes.

Q. How much?

A. His price was—

Q. Did you agree on a price?

A. \$255 at first.

Q. Yes.

A. Then it was increased.

Q. Increased to what?

A. \$300—\$354.

Q. \$354 instead of four hundred dollars. That was for the chimney alone, not for the altering of this? 20

A. The other is included.

Q. Well, your item seems to have the change of red fire brick to Winslow brick. Is that included in the \$400?

A. Yes, sir.

Q. How did that come about?

A. Well, a Fisher brick is much cheaper than Winslow brick. 30

Q. How did you come to make the change?

A. He wanted the same as Jimmy Ruberton's house and that is what we did, and we went to Mr. Del—Mr. DelVecchio was with me when I went to Mr. Jeannette, and Mr. Jeannette is in court.

Q. You have allowed him a credit of \$800?

A. Yes, sir.

Q. What was that for?

A. That was to complete the old house.

Q. How did you arrive at that basis of \$800?

A. I figured it cost for the old house—under the old contract it would cost \$400, and it would cost about \$200 for the lath and plaster.

Q. You were to put hardwood floors in?

10 A. Yes, that was \$400 for the hardwood floors.

Q. Was that part of the \$800?

A. Yes, sir.

Q. Now, didn't you have to do something else beside lay the floors?

A. Had to paint it.

Q. Paint it. And what did you allow for that?

A. \$150.

Q. Now, didn't you have to trim it out?

A. Yes, sir; \$200.

20 Q. \$200?

A. Yes, sir.

Q. And you allowed \$800?

A. Yes, sir.

Q. \$400 for the flooring, \$200 for the trim and \$150 for the painting?

A. Yes, sir.

Q. Well, that makes \$750. What is the other for?

A. Just for hardware and whatever miscellaneous they had to get.

30

Mr. Garrison: I want to offer in evidence, if your Honor please, a statement showing the payments that have been made on account of the \$4200 original contract.

Mr. Brown: I don't admit that.

Mr. Garrison: Well, will you admit this is the payment you made?

Mr. Brown: Yes.

(The paper offered is received in evidence and marked as an exhibit for the plaintiff P4.)

Q. Now, Mr. Speece, I show you P4 and ask you if that correctly represents the manner in which the 10 payments were made during the time you were working on that job?

A. Yes, sir.

Q. Now, you didn't complete this house, did you, Mr. Speece?

A. No, sir.

Q. Why didn't you complete it?

A. The best reason in the world. I didn't get paid. He broke his contract.

Q. Did you have any conversation with him about 20 these payments at any time?

A. Yes, sir. I had stopped once before down to the house, because I didn't get my money, and the three men who were working there insisted that I go ahead, and after two hours' conference I decided to go ahead. Mr. DelVecchio came down and met me in my office in Bayhead, New Jersey, and he said: "I guess I have to give you some money." I said: "I guess you do." He said: "What did you quit up there yesterday for?" I said, "Didn't those men tell 30 you why I quit?" He said: "Yes." Then he gave me a check for \$500. Then on the twenty-second day of January, this year I called Mr. DelVecchio up at his home and asked him to meet me at Fourth and Chestnut in front of the Drexel Building; I wanted to see him. He came down. I said: "Del, you are

way back in your payments. You haven't lived anywheres near your contract. You guaranteed me \$500 a week when I started and you have cut me down and you haven't paid me for two or three weeks at a time, and sometimes only \$100 or \$150. I want some money." He said: "I went to my bank and the vice-president has asked me for a financial statement," and he said, "I couldn't give it to him and I can't get you no money there; but I went  
10 down to where I was in business on Dock Street and from some of my friends I will get you some money." He went down and I stayed there for two hours, and he is not back until today. This is the first I seen him.

Q. Now, did you have any conversation with him about quitting if he didn't pay you?

A. I sure did. He said: "Well, you might as well quit until I get you some money, because I can't get it yet and if I get it I will bring it over."  
20

Q. Well, did you quit?

A. I did.

Q. Now, why did you quit?

A. Because I didn't get the money. He told me he couldn't get it and I should stop, and I stopped.

Q. And he has never paid you or attempted to pay you since?

A. No, sir; he has not. According to his agreement when I stopped work—according to the contract he signed, according to the contract I filed, he  
30 owed me \$6800 and I got \$2996.

Q. Where was he or where were you when he told you to quit until he could get the money?

A. Fourth and Chestnut, in front of the Drexel Building.

Q. Now, have you ever tried to get hold of him successfully since that time?

A. I have called him up several times and he was not in.

Q. Did you have anybody else to call him up?

A. On the twenty-third of January I went to Bay-head to pay my men. Mrs. Speece called DelVecchio

Q. Never mind that.

A. Well, you asked me if anybody else—I was going to tell you.

Q. Then you received how much all told? 10

A. \$2996.20.

Q. What is the balance due you, Mr. Speece?

A. \$4200, I believe; \$4300.

Q. \$4393.80?

A. Yes, sir.

Mr. Garrison: Cross-examine.

Cross-examination.

20

By Mr. Brown:

Q. Now, Mr. Speece, how long have you been in the building business?

A. About six years this last time and about seven years before.

Q. You have been a contractor for the past six years?

A. Yes, sir.

Q. Are you an architect? 30

A. About five years this last time.

Q. Are you an architect, too?

A. No, sir.

Q. Who drew this blueprint plan?

A. Edward Steelman.

Q. Edward Steelman?

- A. Yes, sir.
- Q. Was he employed by you?
- A. Yes, sir.
- Q. Now, then, you say you had a set of plans previous to the drawings?
- A. These blueprint plans which had been sketched.
- Q. On the backs of calendars?
- A. On the backs—on the back of one calendar, and  
10 was stuck up on the inside of the old house.
- Q. Was it there when you left there?
- A. It was there until Mr. DelVecchio asked Mr. Steelman to make a change, and that is where the ones—
- Q. Now, what plan, if any, did you have for the building or remodeling of this house before you entered into the contract?
- A. We had just a little pencil sketch, as I told  
20 you.
- Q. On the back of the calendar?
- A. Yes, sir.
- Q. And it was on the strength of that sketch that this contract was entered into?
- A. Yes, sir.
- Q. Now, what did that sketch show?
- A. That sketch showed this old house with little spires and peaks. He wanted them peaks taken off.
- Q. Was it a floor plan or elevation plan?
- A. That was a floor plan there.
- 30 Q. Well, would the floor plan show the peaks?
- A. No; we had to take them off. They wanted them off.
- Q. Well, now, was there more than one floor plan on the back of that calendar?
- A. No, sir.
- Q. Was it the floor plan of the first or second floor?

- A. First floor.
- Q. Did you have any elevation drawing at all?
- A. Yes, sir.
- Q. On the back of this calendar?
- A. Yes, sir. It was just a small thing.
- Q. What was the size—that was the size of it, wasn't it?
- A. The calendar was that size; yes, sir.
- Q. A card board calendar of this size?  
10
- A. Yes.
- Q. Who sketched that?
- A. Mr. Steelman.
- Q. Is Mr. Steelman an architect?
- A. I believe he is taking up the course.
- Q. He is merely a student architect?
- A. Well, he will have to answer that question himself. I don't know what he is. I know he drew the plans and all the plans he ever drew passed inspection.
- Q. These calendars were yours, weren't they?  
20
- A. Yes, sir.
- Q. Was he in the habit of drawing plans for customers on the back of your calendars?
- A. He came to my house Sunday and drew those there.
- Q. These plans?
- A. Yes, sir.
- Q. What Sunday?
- A. The Sunday after he wanted the house  
30 changed.
- Q. When was that?
- A. Sometime in October or beginning of November, I guess it was; around the fourth or fifth of November. I don't know exactly the date.
- Q. When did you draw the blueprint plans?
- A. After those were submitted to Mr. DelVecchio at his office, 218 Walnut Street.

Q. After these were submitted?

A. Yes, sir.

Q. Is the blueprint plan an exact copy of this—is the blueprint plan an exact copy of what is on these cardboards?

A. I couldn't say.

Q. Well, it is supposed to be?

A. Supposed to be, yes. There may be some alterations. I don't know what was done.

10 Q. Now, as a matter of fact, isn't this the plan on which you made your bid and the contract was made?

A. Why, no, Mr. Brown.

Q. Was there anything on the back of that calendar which indicated what work was to be done?

A. Yes, sir.

Q. Where is that calendar now, do you know?

20 A. That calendar was left at the house, on the side of the partition in the front room, after the partition was taken from the front of the house, so they could see to go by, what they were to do.

Q. You had it there to see, to go by?

A. Yes, sir.

Q. Well, you left it there in January?

A. Twenty-sixth day of January or twenty-third day of January.

Q. And it was left there all that time and the men used that as the plan of operation?

30 A. Oh, no. That plan was there from the start and after Mr. DelVecchio asked Mr. Steelman to change to that other plan, we came down to our house on Sunday and submitted those plans—made them and I put them over the next Monday morning to his own office on Walnut Street, and they were accepted. Then we drew this blueprint.

Q. Does this plan include all of the extras or

changes from the original contract? I am talking about the blueprint plan.

A. No; there isn't no closet on there. The laundry is not on there where it should be.

Q. Now, wherein does that plan differ from what the contract contemplated?

A. Well, there is a whole lot of difference.

Q. Well, where is the difference?

A. Well, the house is much larger.

Q. How much larger? 10

A. Well, I suppose it is—in material it cost you about a thousand dollars—

Q. I didn't ask you how much it cost. I asked you how much larger it was.

A. Well, I couldn't tell you how much larger it is now.

Q. Wherein was it enlarged?

A. Why, the whole floor plan. This house, on the original was only half as long; it was about ten foot shorter when we started. None of this stuff was to be on back there, and the center of your house stood like that. We then took and built to this portion, front out here, and put it back like that. 20

Q. How many rooms were to be on the first floor?

A. The same amount of rooms.

Q. According to the original plan?

A. The same amount of rooms.

Q. Wasn't it exactly the same way?

A. Practically the same, yes, sir.

Q. Arranged exactly the same way? 30

A. Practically the same, yes, sir.

Q. Were they enlarged on this plan from what they appeared on the original plan?

A. Absolutely, absolutely. There is a room shows you 18 x 18 or 15 x 18, and in the first place it was only half that big. It was 12 x 14.

Q. It was only 9 x 9½ before?

A. No, 12 x 14.

Q. 12 x 14 was the size of that room before?

A. Yes, sir. That room is 18 x 19 now; practically as big as this one.

Q. How did you get the enlargement? Explain that, will you.

A. We had an offset on the front of this house. We tore that offset off and made this house flush. The  
10 house came back to about here. We divided this up into four different rooms and then he wanted that taken back and the old foundation brought straight all the way across, come up like this, come up like that, and make this floor plan square.

Q. Then did you put in a new foundation for the extension of the building?

A. Yes, sir.

Q. Was that contemplated in your original contract?

20 A. No, sir.

Q. Have you charged for it among your extras?

A. No, sir.

Q. Why not?

A. Well, in making up the scale we forgot it, but I can easily add it if you wish it.

Q. But you had other things, Mr. Speece, that you claim as extras?

A. Yes, sir.

Q. Other than contemplated in that plan?

30 A. It cost me \$107 extra work to run those walls, and in making up our bill we had forgotten to put that in, and I didn't change it.

Q. Have you claimed an extra for the enlargement of this house, the outer walls?

A. No, sir; only just as you see it; nothing for the outside work.

Q. Well, it was extra; it was in addition to your original plan or contract, wasn't it?

A. Absolutely.

Q. But you have made no—

A. We haven't added nothing only for the work inside. I was willing to give and take.

Q. Now, when you made up this new plan did you enter into a new contract with Mr. DelVecchio as to what the cost would be for that building as shown  
10 on that plan?

A. I told him that house like Mr. Ruberton's to build would cost \$11,000.

Q. I am asking you what you told him that building would cost as shown on that plan?

A. He told me to go ahead. He said: "I will stand the expense." Not only me, but lots of others he told.

Q. Did you have an agreement with him for \$11,000?

A. No, sir; not an agreement; no, sir.

Q. You did not?

A. No, sir.

Q. Well, if he had gone ahead and built that building at a cost of \$11,000 and then had all these other extras put in the house would have cost him \$16,000; wouldn't it?

A. If Mr. DelVecchio had paid me weekly checks his house would have been complete for \$11,000.

Q. I didn't ask you that.

A. Well, I am just telling you.

Q. I asked you whether or not if he had gone  
30 ahead and completed that building at \$11,000 as shown there on that plan, and then had all these additional extras, it would have cost him sixteen thousand dollars?

A. It would not. It only cost him the flat plan of \$11,000.

Q. What else was on that plan that is not contemplated in the original plan?

A. Well, I will show you another extra that we put on there and didn't charge for. You see where these stairs are? They are moved. There was a door in there. We closed that up. We moved those stairs over here, and his attic stairs were to come up on the back part of that house. Instead of that we ran them from the store room up to the back,  
10 and we didn't charge for that.

Q. Did I understand you to say that if the stairs had been put in as shown on that plan there would have been a door there opposite them in the partition?

A. Yes, sir.

Q. Is it shown on that plan?

A. No, sir.

Q. Why not?

A. Because he wanted a door here. This was  
20 supposed to be the dining room. How would you get in if there would be a door there from your kitchen?

Q. Would you open up the door right on the steps?

A. No; it was under the steps. That goes in under those steps. The steps don't shoot through with the house. You go up.

Q. Well, that door was to open up to the steps?

A. It was opened up under there.

30 Q. You show a door here from the hall into the dining room, a double door.

A. Sure. You don't suppose your maid every time she comes from your kitchen to the dining room comes in through the hall.

Q. As a matter of fact, you cut the door in from the corner?

A. Yes, after we had to change here to a room. The kitchen was to be here in the first place.

Q. What I am trying to find out is whether there is shown on that plan a door which you closed up?

A. There is none on there.

Q. But you are claiming it as an extra for closing up the door?

A. Yes, because the door was put in afterwards.

Q. Well, was it a door additional to the doors that are shown on that plan?

A. Yes, sir. We didn't charge him for cutting it in, but we did charge him for closing it up, and for the cutting this door in here. 10

Q. Did you close up the door that is shown there from the kitchen to the dining room?

A. Here is your kitchen.

Q. Yes.

A. Why, sure. Your laundry is here. Now, this is supposed to be a toilet.

Q. Did you allow any credit for closing up that  
20 door?

A. Not for closing this door, no.

Q. Wouldn't he be entitled to a credit?

A. Yes, I guess he would.

Q. How much of a credit would he be entitled to?

A. About ten dollars.

Q. About ten dollars?

A. Yes.

Q. In other words, it would cost ten dollars to cut that hole in that wall and put a door in? 30

A. Don't you think I should be allowed something for altering this stairs?

Q. I am talking about the door that is shown on the present plan from the kitchen to the dining room. You closed that up?

A. Absolutely.

Q. I am asking you whether you allowed him any credit on that change?

A. We allowed him \$800 and in that \$800 was \$50 for miscellaneous.

Q. Well, while we are on that, tell me how you made up that \$800?

A. Why, sure. Do you suppose it would cost you anything to change this door?

Q. Don't argue with me.

10 A. For changing this kitchen, dining room and laundry, for cutting in that door there, for putting in a casement window here, what the board of health makes you do in a laundry, run partition across there, I charged him \$800 and told DelVecchio so, and he said, "Go ahead and do it."

Q. How did you make up that figure?

A. I agreed with him. The man understood that.

20 Q. Did you figure how much it would cost you in extra labor and in extra material, and how much in the hardware, etc.?

A. I didn't figure nothing. I went and looked at the thing and told him what it would cost.

Q. You just hauled off and told him what it would cost and he said, "\$800. All right. Go ahead?"

A. Yes.

Q. He was spending your money so recklessly?

A. No, he didn't spend it.

Q. Did you alter the laundry and the kitchen and the office?

30 A. Yes.

Q. You did?

A. Yes.

Q. Now, your contract called for the covering of all new partitions, side walls and ceilings to be lathed and plastered?

A. Yes, sir.

Q. You claim that you used celotex instead of lath and plaster?

A. Yes, sir.

Q. And did you cover all the walls with celotex before you left the job?

A. Before we left there that was all done.

Q. All the walls in that house were entirely covered with celotex when you left there?

A. Well, I don't know whether it was all done or not. They were working on it when I left. 10

Q. Well, you are making a claim—

A. Well, my foreman tells me it was done. His father tells me it was done and I have reason to believe it was done.

Q. Were you on the job?

A. On the last day, no.

Q. How was it the day before you pulled your men off the job? Was all the celotex on?

A. Mr. Brown, there is two weeks previous to that that I stopped, and I didn't get my weekly allowance as he promised. 20

Q. You couldn't have stopped two weeks previous to the day you stopped. I am not referring to the day you left that job.

A. I left there on Saturday.

Q. You were there for the last time on Friday?

A. No, sir.

Q. When were you there previous to that time?

A. I was there sometime during the week. I don't know what day it was, but I was there during the week. 30

Q. Was all the celotex on when you were there?

A. They were working on the celotex then.

Q. Your contract also provided that all the work to be performed is to be performed in a thorough and workmanlike manner, lumber to be of good quality, suitable for the purposes used?

A. Yes, sir.

Q. Do you know whether or not the floors in that house were leveled when you left there?

A. They were not leveled for your hardwood floor.

Q. Do you know whether or not the joists in the house were straight?

A. Well, I had competent men there. I supposed they were.

Q. Do you know whether or not it would have  
10 been possible to have hung the doors in the openings that were placed in the wall partitions?

A. Why, sure.

Q. They were lined up properly for the hanging of the door, were they?

A. Yes, sir.

Q. You know that?

A. Yes, sir.

Q. Now, then, you were called upon by your contract to put in the flooring in the front and back  
20 room upstairs, hard wood; dining room and living room hard wood floors; stair treads and risers to be of hard wood; bath rooms composition flooring; kitchen yellow pine number one; laundry yellow pine number one; hall and first floor and room to be used as office hard wood. Did you put those in?

A. No, sir.

Q. You put no hard wood floors in before you left; did you?

A. No, sir.

Q. Now, then, in your sheathing, you say in here  
30 that you are to use 1 x 10 S 4 S. I don't know what that means, but that contemplates new lumber, doesn't it?

A. Yes, sir.

Q. Did you use new lumber?

A. In that contract—

Q. Did you use new lumber?

A. No.

Q. You used the old sheathing that you took off the house?

A. That was the understanding.

Q. The contract calls for new lumber.

A. I suppose that contract may—

Q. The contract calls for new lumber?

A. Yes, sir.

Q. And you used old?

A. I was told to.

Q. In the case of the porch floor it says that open porch is to be composition flooring, blocked off in squares, same as an enclosed porch. Did you do that work?

A. No.

Q. In studding you are to use 2-inch by 4-inch faced 16-inch O. C.; double studs around all doors; window opening and headers; doubled for all stairs.

Did you do that work?

A. Yes, sir.

Q. Did it complete?

A. Yes, sir.

Q. Now, in your interior finishing you say all interior finish to be cypress or bass wood of good quality, including base boards and trim for all openings, and painted as desired by owner. Did you do that work?

A. No, sir.

Q. The doors—you say the front door to be of  
30 French with side lights, French door from hall to dining room; French door from hall to living room; French door from living room to open porch; all other doors throughout the house to be 2 x 6 x 6 x 6. Did you complete the job of providing and hanging those doors?

A. Not all of them; no, sir.

Q. The only doors you hung on this job were the front and back doors?

A. They cost as much as all of them.

Q. The only doors you hung on that job were the front and back doors?

A. Yes.

Q. And you left the job without any of the doors hung on the inside?

10 A. Yes.

Q. Now, in the case of windows rebated sash D H as shown on plans with pockets for weights and pulleys for cords, all white pine. Did you finish that under your contract?

A. Yes, sir.

Q. All the windows were hung?

A. Yes, sir.

Q. Every window that was provided for was hung?

20 A. I was told by the foreman, yes.

Q. Were hung?

A. I don't know.

Q. You are making a claim for the full contract price, weren't you?

A. I am.

30 Q. Now, then, the hardware: hardware to be standard make, mortised locks and door hinges, sash lifts, locks, weights, pulleys, sash cords, cupboards, hardware, coat hooks for all closets, base knobs must be furnished by the general contractor and such other as are required to complete the work. Did you provide all the hardware which was necessary?

A. A portion of it.

Q. Did you provide all the hardware that was necessary?

A. No, sir.

Q. How much hardware would have been required to have finished the job after you left it?

A. About fifteen dollars' worth.

Q. And that would have included what, Mr. Speece?

A. Included the weights on sashes, the locks on doors.

Q. How about the bathroom fixtures?

A. The bathroom fixtures?

Q. Yes. Did you provide the bathroom fixtures? 10

A. I wasn't to supply any fixtures.

Q. Well, then, you say in here—you have in here also a provision, heating plant in cellar removed to a suitable place to make connections with flue in open fireplace. Did you do that?

A. No.

Q. No. You took the heating plant from the old position and never replaced it?

A. I was never to replace it. He was to have it done himself. 20

Q. Why? Doesn't your contract call for this—heating plant in cellar removed to a suitable place to make connections with flue in open fireplace?

A. Absolutely, but after they found that this old heater was not developed for that house, Mr. DelVecchio went to the Island Company and signed my name and bought a furnace.

Q. Was it delivered there?

A. It sure was.

Q. Did you put it in? 30

A. No, sir; I was not supposed to put it in.

Q. You think you were not called upon to put this in its proper place?

A. That was an agreement of his own. I was not to touch that heating plant.

Q. In other words, the only difference in the

change of the fireplace was a change from the hard red brick to a white sand brick?

A. No, sir.

Q. What other change was there?

A. The changes were to be an 8 x 8 terra cotta flue, and this gentleman, Mr. DelVecchio, went to Mr. Jeannette and said, "I must have an 8 x 13."

Q. Will you look at the contract which has been offered in evidence and tell me wherein it states that  
10 it was to be an 8 x 8 fireplace?

A. That was a small fireplace we were to put in there.

Q. Look at the contract and tell me wherein it says it was to be an 8 x 8 fireplace.

A. It does not say it in there, but it doesn't say 8 x 13 either.

Q. Now, then, about the painting as it is called for in your original contract, all interior and outside work to be painted with two coats of lead and oil,  
20 color as desired by owner. Did you do that?

A. No, sir.

Q. You simply primed part of it?

A. Yes, sir, and allowed him \$150.

Q. Now, with respect to the laundry, stationary laundry tubs and concrete floor if desired by owner. Were they put in?

A. No, sir.

Q. On the flashings; flashings for chimneys to be furnished, asbestos ridge roll and hip shingles for  
30 the hips. Did you put those in?

A. Yes, sir.

Q. That was done, was it?

A. Yes, sir.

Q. Now, in your general synopsis you provide four rooms and bath in front of hall on second floor with necessary bathroom fixtures. Did you provide those?

A. Not the fixtures; no, sir.

Q. And have you made any allowance or given any consideration in this allowance for \$800 for the purchase of those bathroom fixtures, Mr. Speece?

A. Do you want me to answer the question right or just say "No?"

Q. I want you to tell the truth. I am not going to tell you how to answer the question.

A. Mr. DelVecchio changed the bathroom fixtures through Mr. Grillo and the additional price was  
10 made with Mr. Grillo, and I done my part. I done my end of it. The other fixtures and the shower-bath was to be done by Mr. DelVecchio through Mr. Grillo, and I was left out of that entirely.

Q. That work was to be done before you left the job?

A. Yes, sir. Those fixtures I don't know whether they are in yet or not.

Q. Now, you have in here this additional provision: "Attic steps moved to a suitable place in rear  
20 building."

A. He wanted them blocked front after we had started the house.

Q. Well, did you build any back steps?

A. Yes, sir.

Q. Finish them?

A. Yes, sir.

Q. They were all done when you left the job?

A. Yes, sir.

Q. There is a provision in here: "cement steps in  
30 the front of the house and porches." Did you do that?

A. I didn't do the steps but I am charged with them.

Q. Did you do the porches?

A. No, sir.

Q. All side walls outside to be cemented and sanded. Did you do that?

A. They are all cemented and sanded.

Q. They are all cemented and sanded?

A. And I have the bill in my pocket.

Q. Now, then, turning to your bill of particulars, your first item, you say, put in new partitions in laundry. Did you complete a new partition in that laundry?

10 A. Yes, sir.

Q. Isn't it a fact that the only thing that was there when you left the job was the studding?

A. No, sir.

Q. Was the celotex on it?

A. Yes, sir.

Q. Was it plastered?

A. Yes, sir—no. I wasn't to do the plastering. Wait a minute—

20 Q. And you were not to do the plastering?

A. No, sir. I was to put the celotex on. You will find that.

Q. Let me refer you to the contract. Does it have this provision, "All new partitions, side walls and ceilings to be lathed and plastered?"

A. And it was not lathed and plastered. It was celotexed.

Q. Then, when you put the celotex on you were not to do the plastering?

A. No, sir.

30 Q. You had that understanding with Mr. Del-Vecchio?

A. Yes, sir. Mr. Lang was there.

Q. You were to leave the job with no plaster on?

A. He was to plaster it to suit himself.

Q. Now, then, you have this change of the kitchen and the laundry. That was merely a change of name in reality, wasn't it?

A. It was change in the location of one room to the other position.

Q. It didn't involve any more work, did it?

A. Yes, sir; sure it did. If you will look at your plans you will see that the laundry and the kitchen vary in size a little bit, don't they?

Q. But the partitions were not in yet when those changes were made, were they?

A. We had already started them.

Q. How far had you gotten? 10

A. To the partitions here.

Q. How far had you gotten?

A. We had the partitions up and then we changed them.

Q. Had them all completed?

A. All except the celotex on; all the partitions were in.

Q. And you had to tear the partitions down?

A. He wanted them moved over in here and we did it. 20

Q. You are charging extra for cutting a door from the kitchen to the dining room?

A. Yes.

Q. If the kitchen had remained as it shows on that plan, you would have had to cut a door?

A. There was a door cut in.

Q. What do you mean by there was a door cut in?

A. There was a door there. If it remained just as it was there was a door there.

Q. Well, doesn't your plans show or provide for the cutting of a new door? 30

A. Yes; but, Mr. Brown—

Q. So you are charging for cutting a new door in when the door was already there?

A. No. I closed that door up. That was right here.

Q. But according to the blueprint plan that is there, Mr. Speece, there is a door, is there not, from the kitchen directly into the dining room, without going out into the hall?

A. Where is it at?

Q. What is this?

A. That is the kitchen.

10 Q. Well, I am asking you whether or not the plan does not show a door between the kitchen and the dining room direct.

A. No, because that is not the kitchen. The kitchen is over, next door.

Q. Does the plan show it, regardless of any changes that were made after?

A. Yes, that shows it, yes.

Q. Well, you didn't have to cut that door in when the change was made?

20 A. And I didn't have to cut this door in, either, but we did. After we had made the changes we gave him a door under the steps. Then we closed that door up and put this three-cornered door here; because it would not swing right.

Q. In other words, the provision that you are talking about provided for the opening of a door from the dining room to the hall and then they had to go from the hall into the kitchen?

A. Yes; but this door was back here, Mr. Brown, and the steps were swung over to the other side.

30 Q. Now, then, you are charging here for cutting a window in the bathroom?

A. Yes, sir.

Q. Don't your plans show the window in the bathroom?

A. Can you show me one?

Mr. Garrison: Answer the question.

A. No, sir. The bathroom is here.

Q. On the first floor?

A. Yes, sir. That is the extra bathroom that he had put in the laundry.

Q. Right here?

A. Right here, and the Board of Health compelled us to put a casement window in there——

Q. Did you put that window in? 10

A. Yes, sir; it was cut in when I left there.

Q. You put it in, did you?

A. (No answer.)

Q. Do you mean the window casements were in there?

A. I mean the frame, the casement was there.

Q. That was there?

A. Yes, sir.

Q. In other words, there was a hole in the wall in which you put this window frame? 20

A. Yes, sir.

Q. When you left?

A. No; the sash was in there.

Q. Now, then, also in connection with that change you were to remove the old bathroom fixtures from the bathroom on the second floor to the new bathroom on the first floor, weren't you?

A. There was nothing at all in there. I was to take the fixtures out in tearing down the house, and I did that. 30

Q. And those old fixtures on the second floor bathroom were to be used in the first floor bathroom?

A. Yes, sir.

Q. But you didn't use them; you didn't use them?

A. Sure, I tore them all out.

Q. Did you install them in the first floor bathroom?

A. When they were run down there they would not work down there, and he said, "I will get other ones."

Q. You are charging \$275 for cutting and laying sub-joists and laying sub-floor in kitchen and laundry. Did you do that?

A. Yes, sir.

Q. Complete?

A. Yes, sir.

10 Q. I show you a photograph, Mr. Speece, and ask you what that represents?

A. Doesn't that show the joists being cut in the sub-floor?

Q. (Repeated by the stenographer) I show you a photograph, Mr. Speece, and ask you what that represents?

A. That represents the cutting of these joists and floor underneath the joists, the floor on the bottom of your joists.

20 Q. Didn't you just tell me that the floors were completed when you left there?

A. Composition floor—we never put in the composition floor; never claimed to put it in.

Mr. Brown: Mark that for identification.

(The photograph referred to is marked as an exhibit for identification for the defendant D1.)

30 Q. I show you another photograph and ask you what that represents, Mr. Speece?

A. That represents a hall upstairs.

Mr. Brown: Mark that for identification.

(The photograph referred to is marked as an exhibit for identification for the defendant D2.)

Q. And still another?

A. That is downstairs; that is your kitchen.

Mr. Brown: Mark that for identification.

(The photograph referred to is marked as an exhibit for identification for the defendant D3.)

Q. I show you another and ask you what that represents? 10

A. That is the horses cut for upstairs.

Q. That is of the attic steps; isn't it?

A. Yes, sir.

Mr. Brown: Mark that for identification.

(The photograph referred to is marked as an exhibit for identification for the defendant D4.)

Q. What does that picture represent? 20

A. That is the fireplace.

Mr. Brown: Mark that for identification.

(The photograph referred to is marked as an exhibit for identification for the defendant D5.)

Q. That shows the doorway leading in from the living room to the sun parlor, doesn't it?

A. Yes, sir.

Q. What does that picture represent? 30

A. That is the attic.

Mr. Brown: Mark that for identification.

(The photograph referred to is marked as an exhibit for identification for the defendant D6.)

Q. What is that?

A. That is the outside of the house, with the open porch.

Q. Looking—

A. South, I imagine.

Q. From the south?

A. I think it is the south. It is the open porch.

Mr. Brown: Mark that for identification.

10

(The photograph referred to is marked as an exhibit for identification for the defendant D7.)

Q. And that picture is what?

A. That is the back.

Mr. Brown: Mark that for identification.

(The photograph referred to is marked as an exhibit for identification for the defendant D8.)

20

Q. What is that?

A. That is the front and side elevation.

Mr. Brown: Mark it for identification.

(The photograph referred to is marked as an exhibit for identification for the defendant D9.)

30

Q. And what is that one?

A. That is the side toward the street.

Mr. Brown: Mark it for identification.

(The photograph referred to is marked as an exhibit for identification for the defendant D10.)

Q. Do I understand from your direct testimony that the sun parlor and open porch have just been reversed?

A. Yes, sir.

Q. They are reversed, are they?

A. Yes, sir.

Q. Does this represent the front door to the house where I am pointing?

A. Yes, sir.

Q. Look at that picture. Is not the open porch to the right of the front door? 10

A. It was to be on this side in the first place.

Q. Well, it is on there now?

A. No. The open porch was to be over on here, and this was over on this side, on the first—

Q. Didn't you say that the change was made even without these plans?

A. Yes, sir—not from these plans. These were made afterward; but the first plan it was on this side, and there is your man to tell you. 20

Q. Where is the new window that you put in after the house was sheathed and weather-boarded?

A. On the second story, on this side upstairs.

Q. Now, then, that would be right opposite the chimney?

A. Yes, sir.

Q. Is that right?

A. No, sir; back in this corner in here. This is a double window I think upstairs. 30

Q. Does the plan show it?

A. No, it does not show it—sure it does. It shows a single window.

Q. Well, do you know whether that is a double window or not?

A. There is one marked there.

Q. Do you know whether there was a double window put in there or not?

- A. No, I don't.
- Q. Well, you are charging for it, aren't you?
- A. Well, I know it by what my men told me.
- Q. You are charging for it?
- A. Yes, and it is in there, too.
- Q. You don't know whether it is in there?
- A. Yes, I do know.
- Q. How do you know?
- A. Because my men tells me.
- 10 Q. Now, as I understand it, this blueprint drawing was made from these drawings?
- A. Yes, sir.
- Q. Now I am referring to the cardboard drawing drawn on the back of your calendars. Did they contemplate the making of a sewing room upstairs?
- A. Let's see them, please.
- Q. Well, don't you know?
- A. No, I don't.
- Q. Does the blueprint?
- 20 A. No, the blueprint doesn't show no sewing room upstairs.
- Q. Is that the upstairs plan that I am showing you?
- A. Yes.
- Q. Does that show it?
- A. Yes, sir.
- Mr. Brown: Mark that for identification.
- 30 (The photograph referred to is marked as an exhibit for identification for the defendant D11.)
- Q. Then the sewing room was in contemplation at the time you drew the blueprint plan, wasn't it?
- A. No, sir. If it would have been it would have been in there.

Q. But Mr. Speece, you said that these rough drawings on the back of these calendars represented the plan of the house as it was agreed it should be changed?

A. Yes, sir.

Q. And that these blueprint plans were drawn from the rough drawing?

A. But Mr. DelVecchio changed. He didn't want no sewing room at the first stage of the game. This bathroom was supposed to be off here. 10

Q. But at the time these rough drawings were made he did want the sewing room, did he?

A. No, sir.

Q. Well, why did you make provision for it then?

A. If he had it would have been in here.

Q. Why did you make provision for a sewing-room in this plan drawn on the back of this calendar if Mr. DelVecchio didn't want it?

A. It cost too much money for him to put them in at that time. 20

Q. And in spite of all that you put it in the plan?

A. Yes; that is a rough sketch.

Q. Where were these rough sketches made?

A. At my home.

Q. Now you are charging for cutting an opening for shower bath, relining for same, knob, concealing of pipes. Was all that work done?

A. Yes.

Q. Does it show it completed on any of these pictures? 30

A. I don't know when that was taken.

Q. Can you tell by looking at them when they were taken?

A. I think they were taken long before we left there.

Q. You think they were?

A. Yes.

Q. Look at them again, Mr. Speece. (Photographs handed to and examined by the witness.)

A. I don't see anything that resembles it at all.

Q. It doesn't look like the building you left?

A. No. I am under the impression that our building was much further advanced than what it is there when we left.

Q. You didn't have all your weather-boarding on when you left; did you?

A. Only what I am told. They tell me it was all on.

Q. Mr. Speece, before you left this job you had a conversation with Mr. Sparks, didn't you?

A. Yes; on the day I quit I did.

Q. Did you have some conversation with him on the day before you quit?

A. Why, no; I have not been down there.

Q. Where were you when you talked to him on the day you quit?

A. I didn't see him the day I quit.

Q. I thought you said you had a talk with him about it on the day you quit?

A. No, no; that is he—the first time I quit I talked with him in the house.

Q. I am talking about the last time.

A. I didn't see Mr. Spark.

Q. Had you a conversation with him about leaving that job at all?

A. Only the first time I did; yes, sir.

Q. I mean the last time?

A. No, sir, I did not.

Q. Absolutely not?

A. No.

Q. Did you have a conversation with him wherein he said that you should not leave that job in the con-

dition that it was in; that you should stay there at least to close the house in from the weather and the roof?

A. That was three weeks before I quit.

Q. That was three weeks before you quit?

A. Yes, sir; that was down in his house; that was not only with Mr. Sparks but with Mr. Steelman and his father both.

Q. Now, you are charging, Mr. Speece, a \$1000 for colonial siding?

A. Yes, sir.

Q. How do you arrive at that difference in cost?

A. I told him what it would cost him to put it on.

Q. You were bound to put some siding on the house?

A. I was bound to put six-inch cedar siding, the balance; not all, but the balance.

Q. Did you make any allowance to him in the figure?

A. I told him what it would cost, a thousand dollars.

Q. You lined off and said it would cost a thousand dollars?

A. Yes, sir. That offering was his hesitation and he walked around and talked with Mr. Steelman about the colonial siding.

Q. Did you measure it to see how much colonial siding you would need?

A. No. I didn't have to.

Q. You were able to figure it just by looking at it?

A. I could judge what it would cost.

Q. And the siding was on there when you left?

A. Yes, sir.

Q. Now, do you know how much of this copper flashing Mr. DelVecchio purchased?

A. I don't know how much he purchased, but I know how much I purchased.

Q. Do you know where it was purchased?

A. He told me on Arch Street, I think.

Q. How much did you put there?

A. Well, we covered all the house—I suppose we put on seventy-five dollars' worth of copper.

Q. I didn't ask you in money. I asked you how much copper flashing you put on. When you buy or  
10 ask for copper flashing, do you ask for \$75 worth or so many feet?

A. I asked for it by the pound.

Q. How much did you put on by the pound?

A. I suppose we put a couple of hundred on.

Q. Do you know how much?

A. No; I don't know how much.

Q. Do you know how much Mr. DelVecchio bought for you?

A. For me?

20 Q. Yes.

A. No, sir; because, Mr. Brown, that was entirely in another agreement.

Q. You didn't put any copper flashing—

A. Yes, I did.

Q. You didn't put any more copper flashing on that than Mr. DelVecchio bought?

A. Yes; I did.

Q. As a matter of fact, you had a job at the time you were working on Mr. DelVecchio's house up at  
30 Bayhead, didn't you?

A. Yes, sir.

Q. All the copper flashing that you bought you took up to Bayhead, didn't you?

A. No, sir. That was sent there by Mr. Fritz by express.

Q. How far had this building progressed to completion when you left there?

A. The last time that I seen it it was all ready to go inside and for him to put his plaster on and for us to go ahead and trim it out.

Q. And that was several days before you pulled your men off the job?

A. Yes, sir.

Q. And how long did you think it would have taken to complete the job?

A. About three weeks.

Q. About three weeks, how many men? 10

A. Well, two men.

Q. Two men three weeks to complete the job?

A. Yes, sir.

Q. It required plasterers?

A. Well, I am not talking about the plasterer. I am talking about the carpenter work. I have nothing to do with the plaster.

Q. Is Mr. DelVecchio entitled to any credit because of the fact that you were not required to do the plastering? 20

A. No; that was an agreement in the presence of the agent of the celotex wall board.

Q. But in your original contract you contracted to do the plastering?

A. Yes, sir.

Q. And finally you agreed that you would not have to do it?

A. I agreed?

Q. Yes, you and he agreed that you would not have to do it? 30

A. Yes.

Q. Wasn't Mr. DelVecchio entitled to some credit for that change?

A. Not for that; no, sir.

Q. Why not?

A. I had to take and line the whole house. It was

all lathed and plastered. I had to take the interior upstairs and downstairs off. I should have charged more for that. You couldn't have got it done for what I charged him.

Q. How much do you think it would cost to put the trim in that house after you left there?

A. I don't know what it cost after I left there.

Q. How much do you think it would cost to put the trim in the house after you left there?

10 A. About \$200.

Q. You didn't have any trim in, though, did you?

A. I could trim it for \$200.

Q. Did you make any allowance for the completion of the attic steps?

A. Yes, sir.

Q. How much did you allow on that?

A. The attic steps were completed.

Q. The attic steps were completed when you left?

20 A. I am under that impression by the men, that they were completed.

Q. Do you know whether they were or not?

A. No, sir; I don't.

Q. How much allowance did you make in your contract, in this \$800 time, for the laying of floors?

A. \$400.

Q. That was for floors all over the house, wasn't it?

A. Yes, sir.

Q. Included the composition flooring?

30 A. No, sir.

Q. How much allowance did you make for composition flooring?

A. There was no composition flooring except in the bathroom.

Q. Wasn't there composition flooring in the kitchen and laundry?

A. No, sir.

Q. Where was all this four thousand four eighty-six square feet of composition flooring to go?

A. That is what I told him it would cost if we put it in; but we didn't put it in and we have not charged him for it, either.

Q. But if you stayed there you would have put it in?

A. And I am not charging it.

Q. You are just charging for what you did and 10 what you completed?

A. Yes, sir. I haven't charged him for all I did.

Q. Then, as I take it, this house was entirely complete when you left it with the exception of the fact that the composition flooring was not laid and the old toilet fixtures were not put in the laundry, and the tiles were not put in the bathroom?

A. You know the tile ain't in the bathroom.

Q. But that is all that you have eliminated from 20 your extras.

A. The tile—Mr. DelVecchio got a man to do the tile afterward. He has a lien, too, the same as I got.

Q. Now, then, Mr. Speece, let us come to that a minute. You have a provision in your contract, do you not, that before any final settlement is made the general contractor shall file with the owner a release of liens with affidavits attached certifying to its correctness? That provision is in the contract; isn't it?

A. That is in the beginning of the contract; yes, 30 sir.

Q. Now, then, did you ever offer to Mr. DelVecchio a release of liens for any payment that you got?

A. The house wasn't done.

Q. Did Mr. DelVecchio when he refused to pay you any more money say to you that one of the reasons

was the fact that he had received stop notices against this house because of the fact that you had not paid your material men?

A. No, sir; he did not.

Q. Well, that was a fact, wasn't it?

A. No, sir; it was not.

Q. You don't know anything about it?

A. Why, Mr. Brown,—

Q. How much—

10

Mr. Garrison: Just a minute, please. Let him answer that question.

A. (Continuing) on November sixth he didn't pay me.

Q. Well, all right.

A. How could I give him a release of liens the second week I started, when he didn't pay nothing?

Q. You had practically \$3,000 on account of your original \$4,200, didn't you?

A. Yes, sir; \$2,996.20.

Q. Now, did you pay the material men?

A. I took provision to pay my payroll.

Q. Did you know that the building had been liened and that stop notices had been filed by material men and sub-contractors on this job?

A. No, sir; that was after I—

Q. Did you know that stop notices had been filed against the building by the laborers that you hired?

30

Mr. Garrison: Now, when, Mr. Brown? He is entitled to know that.

Q. Well, any time.

Mr. Garrison: Well, before or after he left?

Q. Either way?

A. After I left, yes.

Q. Not before?

A. No, sir.

Q. Did you know that one of the material men sued Mr. DelVecchio for moneys for work done on this house during the time that you were there?

A. Mr. Jeannette?

10

Q. Yes. Did you know that?

A. Yes.

Q. Tried to get his money from him that was properly due from you?

A. Do you know that Mr. Del Vecchio told Mr. Jeannette he would pay him before?

Q. Do you know that it was tried on that issue and Mr. DelVecchio said he didn't owe Mr. Jeannette but you owed him?

A. No; I did not. Mr. Jeannette will tell you.

20

Mr. Garrison: Is Jeannette here?

The Witness: Yes, sir.

Q. Now, you had something in here, Mr. Speece, a twin window, in the bathroom?

A. Yes, sir—twin window in the bathroom?

Q. Yes.

A. Where do you see that?

30

Q. Wasn't there something in here about a twin window in the bathroom that you are claiming?

Mr. Garrison: Is that in the contract?

Q. As an extra?

Mr. Garrison: I don't see that, Mr. Brown.

Mr. Brown: Well, I had in mind his cutting in window for bathroom. That is all.

Re-direct examination.

By Mr. Garrison:

10 Q. Mr. Speece, assuming that you had used the six-inch cedar siding, could you have used any of the old siding?

A. Yes, sir.

Q. And in your agreement to put on the colonial siding for one thousand dollars, you took into consideration the old siding that you could have used?

A. Yes, sir.

Q. Have you charged anything in your bill of particulars for tiling in the bathroom?

20 A. No, sir.

Q. Were you present when Mr. DelVecchio agreed to pay Jeannette for doing that work?

A. Yes, sir.

Q. And when did that conversation take place?

A. At his house.

Mr. Brown: I object because that matter is res adjudicata. Jeannette brought suit against DelVecchio for the building of this fireplace and we claimed  
30 that it was not properly chargeable to us; that it was chargeable to Speece. The issue was tried and determined adversely to the plaintiff Jeannette. Now, regardless of what this man said, it is res adjudicata. It is Speece's bill and not ours.

Mr. Garrison: Then I want to move to amend my declaration. I did not know they had a suit about this.

Mr. Brown: Oh, yes, you do; because I talked with Mr. Godfrey and you about it; went down and asked you if you would not produce this man as a witness; asked you to get the bill from Mr. Speece about it.

10

Mr. Garrison: It is all news to me. Now I want to amend this complaint to add Mr. Jeannette's bill. It has been so adjudicated by another Court that it belongs to us. We have not charged for it. If we owe Mr. Jeannette that bill, if he is holding us for it, we have not charged for it and we think we ought to have a right at this time to include this in our extras.

The Court: Well, I will permit it.

20

Mr. Brown: I object to it because I say it is already there.

The Court: I will permit it. If it is there it cannot do any harm.

Mr. Garrison: I am not so sure about it. I have to find out about it.

Q. Now, Mr. Speece, in your charge of \$400,  
30 change of location of sun parlor from one side to the other of open porch, French windows cut in living room instead of dining room, change of fire brick from red brick to Winslow brick, \$400,—did that include Mr. Jeannette's bill of \$350?

Mr. Brown: I object, if your Honor please.

Mr. Garrison: I have a right to find out if it is included.

Mr. Brown: But we are not chargeable with the payment of this man's bills.

10 The Court: I think Mr. Brown's position is well taken. If it is in the contract, if it is not in that item and this man has seen fit to leave it out, he cannot maintain it against this defendant until a suit has been brought against him and it has been fixed as his liability.

Mr. Garrison: Well, I don't know that it is material, anyway. It is \$336—

20 Mr. Brown: That is one way of getting the evidence in, and that statement of counsel ought to be stricken from the record.

The Court: Strike it out.

Mr. Garrison: I consent to it.

Q. Now, Mr. Speece, something was said about the heating plant. Were you to put in a new heating plant, or what were you to do under your contract?

30 A. I agreed to take the old heater out of the way, move it over near the window.

Q. Now, did you do that?

A. We started to do that, I think Del Vecchio came to the conclusion—the plumber came down and looked at it and said: "That heat will not answer your house." Mr. DelVecchio said: "I want a bet-

ter heat. Leave it alone," and he then went to the Island Furnace people and made an agreement to buy that furnace and put it in himself.

Q. You had nothing to do with that?

A. Absolutely no.

Q. And you had nothing to do with plastering the house?

A. No.

Q. Now, you say that the painting of the house was done? 10

A. Yes, sir.

Q. And you have allowed \$150 to finish it?

A. Yes, sir.

Mr. Garrison: I think that is all.

Re-cross examination.

By Mr. Brown:

20 Q. I show you a copy of letter, Mr. Speece, dated February 27, 1926, and ask you whether or not you have ever seen that before—the original?

A. Yes, sir; this is a copy of it.

Q. You received that in the mail, didn't you?

A. Yes, sir.

Mr. Brown: Mark it for identification.

(The paper referred to is marked as an exhibit for identification for the defendant D12.) 30

Q. I show you another copy of letter dated February 15, 1926, and ask you if you saw the original of that?

A. Yes, sir.

Q. Have you the originals?

A. Yes, sir.

Q. Will you produce them?

Mr. Garrison: I have copies of them. I haven't the originals.

Mr. Brown: Mark that for identification.

10 (The paper referred to is marked as an exhibit for identification for the defendant D13.)

Mr. Brown: I served a notice on you to produce the originals.

Mr. Garrison: Well, Phillips sent me a copy.

Mr. Brown: You have not the original?

20 Mr. Garrison: I have the letter Phillips wrote me.

Q. Did you make any reply to those letters?

A. Referred them to my attorney.

Q. Did you make any reply to those letters?

A. No, sir.

Mr. Brown: That is all.

30 Mr. Garrison: Will you produce a copy of letter written to Mr. DelVecchio February 12, 1926?

Mr. Brown: I do not think I have such a copy and I have no notice to produce any such. If I have you may have it, sir. Written to Mr. DelVecchio or Mr. Phillips?

Mr. Garrison: To Mr. DelVecchio at 5326 Diamond Street, Philadelphia.

Mr. Brown: What date?

Mr. Garrison: February 12, 1926.

Mr. Brown: Is that the one you mean? (Handing paper to Mr. Garrison.)

Mr. Garrison: Yes. I offer in evidence letter 10 dated February 12, 1926, written by myself to Mr. J. A. DelVecchio, 5326 Diamond Street, Philadelphia, Pennsylvania, and ask to have it marked.

(The paper offered is received in evidence and marked as an exhibit for the plaintiff P5.)

By Mr. Brown:

Q. How long after you left this job was it before 20 you went to Mr. Garrison to lien this building?

A. Sometime in the beginning of February.

Q. You left the last of January, didn't you?

A. Yes.

Q. Almost immediately you went to him?

A. After I couldn't get any—

Q. After you left the job?

A. Yes, sir.

(Witness excused.)

30

EDWARD STEELMAN, JR., called as a witness on behalf of the plaintiff, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Garrison:

- Q. Mr. Steelman, where do you live?  
 10 A. Camden.  
 Q. And what is your business?  
 A. Carpenter.  
 Q. Carpenter, and sometimes do you make drawings?  
 A. I did at Mr. Speece's request.  
 Q. And did you make these drawings that have been introduced here?  
 A. I did.  
 Q. When did you begin working on this house?  
 20 A. Well, I was the first one that went down there when it was started.  
 Q. Now, when it was first started did you have these plans?  
 A. No, sir; they were not made up yet.  
 Q. Was there any plans at all made up for your starting?  
 A. There wasn't no plans; just a rough pencil sketch.  
 Q. And what was that rough pencil sketch like?  
 30 A. Why, that just showed what was to be cut off of the old house. All the projecting parts on there were to be torn off and the old porch, and where the back was to be filled out with a new foundation and built up square.  
 Q. Now, did you do any work on the old house according to that sketch?  
 A. Why, we practically had to tear them turrets

all off. There would be very little left of the old house standing when we finished.

Q. You had that done?

A. What, had all of that work been done?

Q. Yes.

A. No. We didn't get that done for quite a while because we only had a little bit of help at the beginning.

Q. How far did you go before the new plans were made?

A. We had about half of it torn out before the new sketch was made up. 10

Q. Do you know about how many weeks you had been working there?

A. I judge we had been there about two weeks when we decided to draw this sketch up.

Q. Who got you to draw this sketch?

A. Mr. Speece.

Q. And where were the preliminary sketches drawn? 20

A. At Mr. Speece's house in Delanco.

Q. Then afterwards were those preliminary sketches reduced to this blueprint?

A. Why, yes. These were made up and a few changes made on it, which you can see from the pencil sketch.

Q. Some changes made from the other?

A. Yes, sir.

Q. Why, you don't know?

A. Why I don't know.

Q. But you drew this? 30

A. Yes.

Q. Now, will you tell the jury as best you can how this present sketch differs from the first pencil sketch you had?

A. Why, they decided to do away with that sewing

room to give more room in those two big bedrooms in the front on the second floor.

Q. Yes.

A. And that is about all the changes they made at that time, except in the roof. You can notice on the pencil sketch that this here showed another cornice. That came down and hit in here to give it a colonial effect. That was shown on the pencil sketch, though. That is on the calendar.

10 Q. What change was made to that, if any?

A. Why, that would just do away with a straight cornice that ran up here. It just cleared that window and ran down along there, to give it that particular shape on the roof.

Q. Were there any changes made from that present sketch afterwards?

A. Yes, sir.

Q. Still made changes?

A. Still made changes.

20 Q. Now, altering laundry, kitchen and office location, putting in new partitions—

Mr. Brown: I object to the reading of the bill of particulars. I think this witness ought to be able to testify what changes were made without having his attention called to them.

Mr. Garrison: All right.

30 Q. After you had drawn these plans tell the jury what other changes were made from those plans. Tell the jury what other changes were made from those plans.

A. Why, they decided to change the downstairs, and the first change was made was the office.

Q. Now, where was the office?

A. The office was to be over here and there was a door to come through here. See? So they changed

that around and we put a twin window in instead of a single window over here. Then they decided to put this here mineral floor into the kitchen. Well, we had the kitchen moved over here and put the old floor down in there, and we had to rip that up and hew off the top of the joists to put this here composition floor in. Then after that was—

Q. Where was this kitchen intended to be in the first place?

A. The kitchen was intended to be over here and the dining room was intended to be here. See? 10

Q. Yes.

A. And when that was changed over we had another door to cut in here. See? One side came from the living room in here into this office, but there was no door in here to go through into the kitchen. See? That door was changed over into this position and then there was like an extra bathroom built in here. These stairs were up over on that side so as to give a chance to get from the kitchen in here to the hall 20 to go into the dining room. Then they decided to change around again and this was to be filled up in here. When I left that had not been changed. They were just to start on that, and the corner of this room cut off so as to give that door to go through here without coming out into the hall.

Q. Now, did you hear any conversation between Mr. Speece and Mr. DelVecchio about altering the laundry, kitchen and office?

A. Most all of those conversations took place outside of Hammonton, and I was in Hammonton at the time. 30

Q. You didn't hear anything about that?

A. No; I didn't hear any arrangements at all.

Q. Now, what other changes were made? You have told us about the kitchen and the laundry and the office.

A. Then Mr. DelVecchio wanted a door just like this put over here in place of that single door, and there was quite an argument on that, and we got on so far that we had to put that door in, and it was put in just as it is here on the plans; but Mr. DelVecchio wanted to put a door like this in there and Mr. Speece didn't give me the authority and I didn't put it in there.

Q. Then you didn't make that change?

10 A. I didn't put it in there. It is just the same as the original plan.

Q. Now, when you changed the kitchen and laundry, did you have to do anything to the floor?

A. The floor in the kitchen, we had to tear that all up. See?

Q. Yes.

A. That had been put down and then we had to put a sub-floor in and chop a few of those joists down for this mineral floor.

20 Q. In other words, you had to have a sub-floor?

A. Had to have a sub-floor.

Q. And that was done, was it?

A. That was done. It had to be torn out and put in.

(Recess to 1.45.)

AFTER RECESS.

EDWARD STEELMAN, JR., recalled.

Direct examination.

By Mr. Garrison (resumed):

Q. Now, Mr. Steelman, you were telling us about 10  
the changes that were made. I think the last you spoke about was the cutting and laying sub-joists. Now, were there any other changes that were made that you think about?

A. Why, in the upstairs part there was to be a closet made in each bedroom, and for to do that we threw another partition in here, used half of that space in there for a closet to each room, and that was done—the partition was put up before I left and it was to be done in another room. I left a week before they started work on it. 20

Q. Does that show on the original plan?

A. No; that does not show on any plan at all.

Q. That was an extra?

A. That was an extra, yes.

Q. Now, you have spoken of a closet. Do you know anything about an extra window that was to be placed somewhere?

A. That was to be in that extra bathroom downstairs, and that was all cut out and was partly in when I left. It was finished up a day after I left 30  
down there. I left at the end of the week and they quit the end of the following week after I left.

Q. And was that an extra?

A. That was an extra with that bathroom. That was downstairs on the first floor.

Q. Had there been some change in the bathroom?

A. And there was to be a partition put up across there and change the laundry, see? These in the center over on to the side and use part of that laundry for this extra bathroom.

Q. Well, in the beginning where was that—where was the bathroom to be?

A. There wasn't to be any bathroom on the first floor in the beginning.

10 Q. In the beginning?

A. In the beginning.

Q. Does your second plan show a bathroom?

A. Why, in the first place the bathroom was to be in the front; then, secondly, it was changed to the back; it was going to use that space in the front to make the front bedrooms larger.

Q. I see.

20 A. Then to wind up with they decided to use that space in the front of the stairs at the angle of the building for a sewing room.

Q. And that was a change from the plan?

A. That was a change from the plan, see?

Q. Now, do you know anything about the kind of plastering that was to be used in your original plans?

A. Well, in the original plans we were to use the old plaster wherever we could. Then it was changed and we had all of that to tear off again.

Q. Where was it changed? Why was it changed?

30 A. To use celotex, replace this plaster with celotex.

Q. And was that done?

A. Well, that was started. It was already on the ceilings upstairs when I left.

Q. And you didn't stay there until the job was completed?

A. I didn't stay there until the celotex was all on;

no, sir. It was just on the ceilings upstairs when I left.

Q. Now, what kind of sidings did your original plans specify?

A. In the beginning we were to use all of the old sidings that we could. Then it was changed and to make it a colonial house we decided to put on ten-inch siding instead of six, and that was all put on except about three hundred and fifty feet when I left. He had twenty-five hundred feet of this ten-inch siding put on the building. 10

Q. Can you tell me about how long before the work actually stopped that you went away?

A. Just one week.

Q. A week?

A. Just one week.

Q. Now, what kind of siding was contemplated in the beginning?

A. The six-inch siding, and to use the old off of the building to replace where we needed other siding. 20

Q. That was cedar siding?

A. That was cedar siding.

Q. What kind of siding was this that you did use?

A. Why, this was supposed to be colonial—this was supposed to be California cedar, either California cedar or white pine.

Q. Now, do you know anything about the copper flashings?

A. The copper flashings were all put in when I left. I put the last of them in myself. 30

Q. Did your original plans contemplate that sort of flashing?

A. It didn't specify any special flashing, but a copper flashing is always worth more money than a plain, ordinary tin flashing.

Q. Now, do you know anything about changing the location of the sun parlor?

A. That was already decided when the first sketch was drawn up. The first sketch he decided to have it on the sunny side where the sun would hit it in the morning. Then on account of the location of the property they decided they would throw it on the other end of the building altogether.

Q. And that was an extra?

A. That was a change in the plans from the beginning.

10 Q. From the beginning?

A. From the beginning. That was the original idea—to put it on the opposite end.

Q. How does it show on the second plan?

A. On this plan here it shows on the street side, toward the street.

Q. But the original plan—

A. The original idea was to put it on the other side to get the sun in the morning.

Q. Do you know anything about the fire brick?

20 A. Why, the fireplace was not started when I left there.

Q. You don't know a thing about it?

A. I don't know a thing about it.

Q. Did you have any conversation with Mr. DelVecchio about your money, or about why your wages were not being paid?

A. Why, I got my money—

Mr. Brown: I object. Answer "yes" or "no."

30

Q. Did you?

A. I did not.

Q. Wasn't anything ever said to you about it by Mr. DelVecchio?

A. The money was always there every week I was on the job.

Mr. Brown: I object to that because of the fact that unless Mr. Del Vecchio was present it could not be relevant.

Q. Who paid you?

A. Why, Mr. Speece. The majority of the time I went to Delanco to get the money.

Mr. Garrison: Cross-examine.

10

Cross-examination.

By Mr. Brown:

Q. Have you been paid in full?

A. Not entirely, no.

Q. And whether or not you get paid in full depends on the outcome of this case, doesn't it?

A. Well, I don't think it does. I will get it later on if I don't get it at the outcome of this.

20

Q. You filed a stop notice in this case, didn't you?

A. No; I did not.

Q. Didn't you?

A. I don't think so.

Q. Do you know whether or not you did?

A. J. T. "Field" is handling my case.

Q. Do you know whether or not you did?

A. He said he didn't at first, but he may have since.

Q. You employed him to do it, didn't you?

30

A. I employed him to get my wages; yes, sir.

Q. Yes. And you expect to get them out of any money that may be due to Mr. Speece?

A. That is the idea, yes.

Q. So to that extent, at least, you are interested in the outcome of this suit?

A. That is the interest that I have.

Q. Now, then, who drew the specifications for this building?

A. The specifications I never saw until here last Thursday.

Q. So that when you say that the contract called for a certain thing you don't know whether it did or not; you never saw it, did you?

A. Just by the order from Mr. Speece, what I  
10 was to put in.

Q. You drew all the plans, did you?

A. Drew every sketch that was drew up for the building.

Q. What was the first plan you drew?

A. The first floor was just a rough sketch of what the old building was, and marked on there what was to be taken off of it to make it look square.

Q. What was that drawn upon?

A. That was drawn upon an ordinary piece of  
20 paper, I believe; just a rough pencil sketch.

Q. How big a piece of paper?

A. A piece of paper I judge about that big, square; just a rough idea of what was to be done.

Q. Well, was it on office or letterhead stationery or writing paper?

A. Just a piece of white paper; that is all.

Q. Ordinary piece of white paper?

A. Yes.

Q. Was not drawn on any calendar, was it, on the  
30 back of a calendar?

A. No, not the first time.

Q. Now, when did you draw up that plan?

A. Why, it was on a Sunday; the first Sunday that we went down there. I talked with Mr. DelVecchio and Mr. Speece together to get an idea of what he wanted before we started on anything.

Q. That is before you started on the job?

A. Before we ever started the job.

Q. Now, did you ever draw any other plan or drawing?

A. Only those three sketches; the first rough one on that paper, and on the calendars and this one here.

Q. And when did you draw the sketches on the calendars?

A. After we had talked it over and went back to Mr. Speece's at Delanco. 10

Q. And before you got on the job.

A. Before we ever touched the job.

Q. And when did you draw the blueprint?

A. About two weeks after we had started on the work.

Q. About two weeks after you had started on the work?

A. About two weeks after we had started.

Q. The blueprint is supposed to represent, is it not, the drawing which you put on the back of the  
20 calendar?

A. Well, there is changes in between this blueprint and that drawing.

Q. In what respect?

A. Why, the first respect I told you was in the elevation here. There was to be like a box cornice run from here down to that point down there, both front and back, to give it a colonial effect. That has been done away with. Then there was a little change in the floor plan. They decided to do away with that  
30 sewing room like on this one and put that room into the bedrooms.

Q. Now, then, building the house as it is drawn on the blueprint plan was cheaper than it would have been to build it according to the plan as it was drawn on the calendar?

A. No; it would not have been; because this top part would have to set back further, and that would have taken a lot more time to frame that up, and there would not have been much difference in the money.

Q. I mean the plan as shown on the blueprint is cheaper, costs less and takes less time?

A. No; it would not take much less time because there is more framing to it. You have to set your partitions out inside of your outside wall, and you have to shore that up to hold it.

Q. Those are the only two respects in which the two plans differ?

A. That is about all.

Q. And these plans on this cardboard are the plans that Mr. Speece had and that he agreed to at the time of the making of the contract?

A. I believe that is so. There were two sets of them. Mr. DelVecchio got one set and Mr. Speece had the other which was left on the job.

Q. So there may be no mistake about it let me show you these four cardboard drawings and ask you if those are the ones you referred to?

A. They are the ones that were referred to, yes.

(Three of the cardboard drawings referred to are marked as exhibits for identification for the defendant D14, 15, 16.)

30 Q. Now, then, will you show me on these drawings that have been marked for identification, wherein the roof is any different from the one shown on the blueprint?

A. This one down here on the edge shows you a difference. It has a little more pitch to it.

Q. But where is the roof that you said ran down to the front and underneath the main roof?

A. We left that open there on account they were undecided on that.

Q. Didn't you say in your testimony that it did appear on these plans and that the blueprint plans differed from these in that respect?

A. The blueprint plans does differ from that particular plan. You take the pitch of the roof and you will see the difference in it. It is a flatter roof than it is here, and otherwise it would have been a little steeper.

Q. But these plans on the cardboard do not show a sub-roof underneath the main roof?

A. That is just the cornice, no.

Q. So there is not much difference between these plans, is there?

A. That was just talked of and told to leave off.

Q. There isn't much difference between the blueprint plan and the plan on the cardboard?

A. No.

Q. Now, then, you have said that there was some extra work done, for instance, the altering of the laundry, kitchen and office location. Now, was that work on that change entirely complete when Mr. Speece left the job?

A. All except the celotex, I believe, on the partitions, and putting in of this mineral floor. It was all ready to put the mineral floor in.

Q. The changing of those rooms around didn't involve any extra work, did it?

A. It involved the taking up of the floor in the original kitchen. It was changed over to be the laundry. The floor was down in there, and then there had to be a floor laid down two inches below the top of those joists, and those joists all had to be chopped off.

Q. That was for the purpose of putting in——

- A. Mineral floor.  
 Q. A composition floor?  
 A. Yes.  
 Q. But the replacing of those rooms didn't involve any additional work?  
 A. No; we couldn't change any partitions in there because they run across the whole upper story of the house.  
 Q. So the changing around of the rooms didn't  
 10 involve any extra work?  
 A. It involved extra work by tearing up what work we had put in, the floor, and then going over and chopping the joists off.  
 Q. The floor you tore up was the old floor that had already been there?  
 A. That floor was placed back again and then re-torn up.  
 Q. Where?  
 A. In the back corner where the kitchen was,  
 20 where we had to build out there about four foot to straighten the building up square.  
 Q. Well, that is what it meant, is it not, by this statement: "The extension on side to be taken back five feet?"  
 A. That is one of the extensions.  
 Q. That is what it meant, isn't it?  
 A. Yes.  
 Q. So that the contract contemplated the extension, didn't it?  
 30 A. The extension to make the building square.  
 Q. Now, then, the new partition in the laundry wasn't completed, was it?  
 A. That partition was put up across there. We have to put in two by fours underneath, to hold that partition up between the laundry and that bathroom.  
 Q. But it was not completed?

- A. That partition was up without the celotex.  
 Q. The only thing that was there was the stud-  
 ding?  
 A. That was all that was needed.  
 Q. There was no celotex or plaster on the parti-  
 tion?  
 A. Not on the partition, no.  
 Q. Now, then, the closing up of the door in the  
 hall, what is meant by that, do you know?  
 A. There was a door in the hall to come through 10  
 from the kitchen. See?  
 Q. Yes.  
 A. And by changing and putting that little room  
 in the corner there and throwing the stairway on the  
 other side, they decided to cut the corner off of that  
 bathroom for to give him room to come through  
 there without going out in the hall between the  
 kitchen and dining room.  
 Q. What door was it that was closed up? Can you  
 point it out on the blueprint plan? 20  
 A. There was a door in through here. See? It  
 come in through here—this was decided to be the  
 kitchen. The door came through here, and another  
 one through here to give us our opening, and there  
 was a double door like this here. When I left this  
 was all in and they had just started to tear this cor-  
 ner out to give them room to go in without coming  
 through the hall.  
 Q. When you left, as a matter of fact, it was three  
 weeks before that job was completed. 30  
 A. I left one week before.  
 Q. What is meant by cutting the door from the  
 kitchen to dining room?  
 A. Right across that corner.  
 Q. Right across the corner?  
 A. Across here, yes.

Q. Now, then, you say something here about cutting and laying sub-joists and laying sub-floor in kitchen and laundry.

A. That is when they changed over from pine flooring to mineral flooring.

Q. Do you know anything about a new window put in the side of the house after the house was sheathed and weather-boarded?

A. That is the one went in the bathroom.

10 Q. Well, then, there was only one window, was there, cut in the side of the house?

A. No; there was two extra windows. The one was put in after that one frame was in and then after everything was weather-boarded on the other side they decided on that change in the laundry and making a little bathroom in there, and they had to cut a window in that bathroom.

20 Q. Now, then, you say that you changed from this cardboard plan to the blueprint plan by cutting out the sewing room, is that right?

A. Cutting out the sewing room.

Q. It was decided not to put the sewing room in?

A. It was decided not to put the sewing room in.

Q. Do you know that Mr. Speece has charged an extra for making a sewing room on the second floor front?

A. Why, on this last, yes.

30 Q. You knew that, didn't you? Now, was all of the celotex put on throughout the house and completed when you left there?

A. When I left, no.

Q. Was there any cutting in of an opening for a shower bath when you left there?

A. There was a partition moved out to give them room for a shower bath, moved out about eighteen inches.

Q. Where was that?

A. That was the original partition for the bathroom, across the back?

Q. Was the shower bath and shower plumbing put in before you left there?

A. Why, the plumbing wasn't put in, no.

Q. And the shower bath wasn't put in?

A. No; that wasn't put in.

Mr. Garrison: We don't claim that.

10

Mr. Brown: You are charging for it.

Mr. Garrison: Oh, no.

Mr. Brown: It is your ninth extra item.

Mr. Garrison: Pipes for the built in shower bath. We don't charge for—

20 Mr. Brown: You have an item in there for cutting an opening for shower bath, relining of same, knob, concealing of pipes, and the next item is built-in shower bath and shower plumbing \$300.

Q. Now, was all the colonial siding on when you left there?

A. There was 2500 feet; just a space on one end and it would take about 350 feet to complete it.

Q. It would take about 350 feet of siding to complete it?

30

A. 350 feet of siding, I believe.

Q. Where were the copper flashings put on?

A. The copper flashings were put on all around on this cornice that you can see here, all across here. It took practically all around the house to put that cornice on.

Q. How many feet of copper flashing do you suppose were used?

A. That I don't know; for it was different weight copper that was brought down. At first they had a heavy weight copper, and the last I got was three sheets—one of the first sheets would weigh as much as the three sheets put together. It was a lighter copper.

Q. Now, you say changing location of sun parlor from one side of the house to the other and open porch. Now, did that involve extra work?

A. Well, not much extra work on that, no.

Q. It simply means a replacement from side to side?

A. Reverse the room.

Q. And none of that work had been done before you placed them as they now are, had it?

A. It had not been done. It was placed that way originally, like this plan.

20 Q. Now, new French doors cut in living room instead of dining room. Where were they put?

A. I didn't know that there were any new French doors cut in at all. The only openings,—the change was this as shown here, and the change that Mr. DelVecchio wanted—he wanted a colonial door with side-lights like this one put in over here, and Mr. Speece didn't give me the authority to put it in or order it, and it was not in the original.

30 Q. So that there was no French door cut in the living room instead of the dining room?

A. There was no French door cut in there.

Q. And you don't know anything about the change of the fire brick from red brick to Winslow brick?

A. I don't know a thing about that.

Q. Are you able to say how far this building had progressed to completion at the time you left there?

A. The time I left it they had about one-third of the celotex on, and what was to be done after that was the balance of the celotex put on and then it was to be plastered before any finishing could be done, and the steps outside had not been started yet.

Q. No painting had been done?

A. The painter had worked there for three or four days when I left.

Q. Just putting a priming coat?

A. Just when I left, yes.

Q. No inside trim had been put on?

A. No inside trim had been put on. That couldn't go in until after the plaster.

Q. Was there any flooring of any kind put in before you left there?

A. Nothing only what we replaced out of the old building.

Q. Was the porch floor put in?

A. The porch floor was put down, wooden floors.

Q. There were wooden floors put down?

A. There were wooden floors on the porch.

Q. In what part of the house?

A. Sun parlor and porch.

Q. Inside of the house were there any floors put down?

A. Just the sun parlor that is closed in.

Q. I mean on the main part of the house.

A. No, there was no finished floor put down there.

Q. And no interior finishing had been done?

A. No interior finishing.

Q. Any of the doors on the inside been hung?

A. The only doors that were hung were the outside doors.

Q. Front and back?

A. Two back doors, one on the inside under the open porch, and the sun doors where the side lights were set in.

Q. All the windows had been fitted?

A. All the windows had been fitted, with the sash in there.

Q. Were the panels in?

A. The sash weights and cords, but no trim on the windows.

Q. And no panels in the windows?

A. No. The glass and all was in there. See?

Q. Was all the hardware provided and placed?

10 A. The hardware couldn't go on until it was finished.

Q. Had the heating plant been installed?

A. They were working on the heating plant when I went away.

Q. Taking it out?

A. No; they were putting in the heating pipes there. They had them completed and they were working down in the cellar.

Q. They had the heating pipes completed?

20 A. They had the heating pipes all installed in.

Q. Were the flashings complete when you left the job?

A. The flashings were all complete, all the copper used up.

Q. What about the bath room upstairs? Was that complete?

A. The bath room upstairs was just framed out in the rough that way, and the plumber was working in there and we couldn't complete until he got complete.

30 Q. The fixtures had not been provided yet?

A. The fixtures had not been provided yet. He was putting the stuff in.

Q. Had the back steps been completed?

A. The horses were put up and they could not be completed until it was plastered.

Q. The cement steps?

A. The cement steps had not been started.

Q. Had the sidewalks been cemented and sanded?

A. No "sidewalks."

Q. Did you hear Mr. Speece say that the sidewalks had been cemented and sanded?

A. Sidewalks?

Mr. Garrison: Sidewalks? We don't charge for any sidewalks. 10

Mr. Brown: It is in your main contract.

Mr. Garrison: Well, show it to us.

Mr. Brown: Oh, side walls.

Q. Had they been cemented and sanded?

A. Not finished, no.

Q. Had any of it been done? 20

A. All the walls were up.

Q. Had any of the side walls been commenced and sanded?

A. No.

Q. Will you look at these pictures that have been offered in evidence, D1 to 10 inclusive, and tell me whether or not they represent the condition of the building as you left it?

A. This first one here, the celotex was not on the sidewalls when I left.

Q. That is D1. Otherwise it does represent the condition as you left it? 30

A. Yes. And this here is just—in the upstairs? See? It is where the celotex had been put on the sidewalls before the other partitions were put up.

Q. Well, is it as you left it?

A. Them sidewalls were not on, just the ceilings were on when I left.

Q. That is D2?

A. Yes. And this here will show you as I left it. That is the ceiling that is on.

Q. D3 is just exactly as you left it a week previous to quitting on the job.

A. Now, this here is the underneath part of the stairway. That is the lower stairs.

10 Q. Well, is that as it was when you left it?

A. That was that way when I left there.

Q. That is D4?

A. Yes. Now, this here—there was none of this on, and the fire place was not there when I left.

Q. The fire place wasn't on and the celotex wasn't on when you left?

A. No.

Q. That is D5.

20 A. And this is practically the same as it was, and that is shown on the end there is the end where the weather boarding wasn't put on, that 350 foot toward the street. That is why you can see through there.

Q. That is D6.

A. Now, this was finished up this way when I left, and this copper flashing—if you notice you can see that dark streak in there. That is where that copper flashing was put all around.

Q. That is D7.

30 A. And this here is the back of the building and you can see the new wall that was built to make that come out square, and over on the other side there was a porch in this corner which we had to tear out. We tore out here, where you see this old foundation, and he wanted that part there to be moved. That part there was to be moved by Mr. DelVecchio himself.

Q. That is about as you left it?

A. Yes.

Q. That is D8.

A. And this here is the front, and that will show you just as it was as I left there.

Q. D9.

A. And this here is the end toward the street where the enclosed porch is, and that is the balance of that siding that was left off. That is practically all of the siding that was not complete when I left. 10

Q. That is D10. Well, now, Mr. Steelman, do you know the condition of this building when Mr. Speece left it? Did you see it after he left there?

A. I saw the building a week before he left it, and have not seen it since until here the other day when we came by.

Mr. Brown: That is all.

Re-direct examination. 20

By Mr. Brown:

Q. Mr. Steelman, one thing is not clear in my mind. See if I am right about this: as I understand it, your first sketch was a sketch on a piece of paper? 30

A. On the piece of paper of the floor plan of the old building.

Q. Then you worked for two weeks —

A. Worked practically about two weeks.

Q. Then you drew these?

A. Drew them afterwards, yes.

Q. And after you had drawn these then you drew this blueprint; is that right?

A. That blueprint was drawn up later after the work had been started.

Q. After you had drawn these?

A. After they had been drawn up, and then the work was started from them, and then this other one was drawn up.

Q. And that is what you worked from?

A. That is what we worked from, the blueprint.

Re-cross examination.

10 By Mr. Brown:

Q. Do you realize that you told Mr. Garrison that these plans were not drawn until after you had been on the job two weeks?

A. They were drawn for to start the job. The first sketch —

Q. Before you did any work?

A. We had just started the work and I had to go back to Delanco.

20 Q. These were drawn before you did any work?

Mr. Garrison: He didn't say that.

A. The first sketch was.

Q. Wasn't this sketch made before you did any work?

A. That sketch was made and the work was started afterwards.

Q. How long after the work was started?

30 A. Well, almost immediately.

Q. Do you recall telling this jury in answer to a question of mine that these four drawings were made before Mr. DelVecchio entered into the contract and before you did any work?

A. The contract, I believe, was signed before that.

Q. Do you recall telling this jury at the previous

examination by me that these four drawings on cardboard were made before you did any work and before Mr. DelVecchio had signed the contract?

A. The signing of the contract I don't know; but before we had progressed with any of the work they were made up.

Q. You do say, then, that these drawings were made before you did any of the work?

A. Before the work was gone on, yes.

Q. So you didn't make those two things after you had been on the job? 10

A. This was the one that was made two weeks after.

Q. But these were made before you did any other —

A. They were made before any changes were made.

Mr. Brown: That is all.

20

(Witness excused.)

WILMORE STEELMAN, called as a witness on behalf of the plaintiff, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Garrison:

30

Q. Mr. Steelman, what is your business?

A. Me? Carpenter.

Q. How long have you been a carpenter?

A. Me? About thirty years.

Q. And did you work on the DelVecchio house?

A. Yes, sir.

Q. You went to work in the beginning, didn't you?

A. I think a couple of days after they started.

Q. Now, you have seen these plans, haven't you?

A. That is right. I didn't bother much with them.

It was none of my business. I was working under the boy and he had charge of it.

10 Q. Do you know anything about what changes were made in the house as it progressed?

A. I know there was a lot of them.

Q. You know there was a lot of them?

A. Pretty near every time he came down there was a change in something.

Q. What is that?

A. Pretty near every time what-you-call-him come down there was a change, one thing and another.

20 Q. Can't you tell the jury some of the changes that were made, if you say some were made from time to time? It does not help us, but can you tell some of them that were made?

A. Well, I know them partitions in the closets—they were changed.

Q. The what?

A. The closets upstairs; that was all changed.

Q. The closets were changed?

A. The bedroom was changed.

Q. The what?

30 A. The sewing room.

Q. Sewing room?

A. And the porches, sun parlor was changed around.

Q. Yes. Now, what about the kitchen?

A. Well, the kitchen that was changed.

Q. Well, that was put in place of the kitchen?

A. Wash room.

Q. Laundry?

A. Laundry, yes.

Q. Well, then, you know of those changes?

A. Yes.

Q. Well, now, do you know anything about a change or a contemplated change in the flooring? Do you know anything about that?

A. I know we had the floor down and it was tore up again. 10

Q. And where was it you had to tear it up?

A. We tore it up out of this wash room.

Q. Why did you tear it up, Mr. Steelman?

A. Why, they said they wanted this tile floor, but I know it was not tile, but it was fixed for tile floor.

Q. It was fixed for tile floor?

A. Yes.

Q. What did you have to do to fix it for a tile floor?

A. Take this floor out and chop those joists down 20 and set this sub-floor down, I think it was three inches, the bottom. That left us two inches above for the tiling.

Q. That was an extra and a change, wasn't it?

A. That was an extra there.

Q. Now, do you know anything about these new windows that were put in there?

A. Yes, sir. I know there were two of them put in there.

Q. Do you know where they were? Can you show 30 the jury from the plans or can you tell better without the plans?

A. One was in that office room; the other in the bathroom downstairs.

Q. And they were actually put in, were they?

A. They were put in.

Q. Now, do you know anything about a sewing room that was put in that was not on the plan?

A. Well, that was put in there.

Q. Now, where was the sewing room put?

A. Right at the foot of the attic steps.

Q. Now, that actually was put there, wasn't it?

A. That was put there; yes, sir.

Q. I think you said something about some closets, didn't you?

10 A. What?

Q. Didn't you say some closets had been put in?

A. Yes, two closets in each room upstairs, on each side.

Q. And were they extras?

A. We put closets here and a door here in each room, and on this side in the other room.

Q. Now, do you know anything about the kind of weather-boarding that was to be used originally on this house?

20 A. No, I don't know what was to be used, but I know what was used.

Q. What did they use?

A. They used colonial.

Q. They used colonial?

A. 10-inch feather-edge.

Q. Do you know anything about any extra work that was done around the bathroom and shower bath?

A. I know we moved a partition there to make room for them.

30 Q. You did. Now, do you know anything about changing the location of the sun parlor?

A. I hadn't much to do with that. I know they did change it, though, from one side to the other.

Q. You know they did change it.

Mr. Garrison: Cross-examine.

Cross-examination.

By Mr. Brown:

Q. Did you ever see the contract between Mr. Speece and Mr. DelVecchio?

A. No, sir. 10

Q. How do you know these were changes then?

A. Because we had to tear down what we put in there to change them.

Q. What did you tear down about these porches that were changed?

A. There was nothing to change on that much, only enclose it around the bottom.

Q. You didn't tear anything down on the porches to make the change?

A. Not on that, no. 20

Q. Well, that didn't indicate that that was a change; did it?

A. No; but it was the same thing; just about the same thing, from one side to the other; that is all was done—just turned it around the other side of the house.

Q. That was not extra work, was it?

A. I don't say whether it was extra. It had to be done, anyhow.

Q. It was not an extra at all. Now, then, what was the change about the windows that made you think there was a change? 30

A. Well, instead of being a single window it was put in there double, in the office room.

Q. And that is not shown on the plan?

A. No; single window.

Q. Now, then, did you know that a sewing room was originally planned for in this house?

Mr. Garrison: Now, I object—go ahead. I withdraw the objection.

Q. How much of an extra was the change in the windows?

A. Well, the window in the front of the house—we had to take that out after Del Vecchio came down because one didn't line up with the other.

Q. You say after Del Vecchio came down. Did you see him just before that change was made?

A. No.

Q. Did you ever have any talk with Mr. DelVecchio about these changes?

A. Not much, no.

Q. Did you hear Mr. DelVecchio order any of these changes?

A. It was none of my business.

Q. Did you hear Mr. DelVecchio order any of these changes?

A. No.

Q. Then why do you say these changes were made after Mr. DelVecchio came down?

A. This window was, I know.

Q. Did you hear Mr. DelVecchio order the change in the window?

A. I was there when he said, "Take that window out and line it up with the other one down below."

Q. And that was on the job?

A. That was on the job.

Q. Did you ever hear him order any other change?

A. No.

Q. Then these changes—you don't know whether these changes happened after Mr. DelVecchio had been down or not, do you?

A. I don't know what business they had between them.

Q. You have also got a stop notice in here for money due you by Mr. Speece, haven't you?

A. Yes, sir.

Q. And you are also interested in the outcome of this suit?

A. I would like to have what belongs to me.

Q. You are depending on the outcome of this suit to get it, aren't you?

A. (No answer.)

Mr. Brown: That is all.

(Witness excused.)

GERTRUDE C. SPEECE, called as a witness on behalf of the plaintiff, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Garrison:

Q. You are the wife of Wilbur Speece?

A. I am; yes, sir.

Q. Mrs. Speece, you know Mr. DelVecchio?

A. Yes, sir.

Q. Did you ever have any conversation with him touching the money due your husband?

A. I did regarding the payroll; yes, sir.

Q. When?

A. About the twenty-third day of January.

Q. Twenty-third day of January, this year?

A. Yes.

Q. What was the conversation you had with him?

A. Mr. Steelman had called me up and asked me about his money, and I said I would get in touch with Mr. DelVecchio. "I understand he is coming down —"

Mr. Brown: I object to that conversation.

The Witness: I called Mr. DelVecchio. Then he  
10 said: "I will try and get the money and I will go  
down and take care of the payroll."

Q. Did he say anything else to you?

A. He said: "I think best for Mr. Speece to stop. I am trying to get the money and until I get the money he better stop."

Mr. Garrison: Cross-examine.

20 Cross-examination.

By Mr. Brown:

Q. Where did that conversation take place?

A. Mr. DelVecchio's home and in my home. I called him up over the telephone.

Q. Where were you?

A. I was in Delanco, New Jersey.

Q. Where did you call Mr. DelVecchio?

30 A. From my home.

Q. Well, where was he?

A. In his home.

Q. And where was that?

A. In Philadelphia; West Philadelphia.

Q. Do you remember the number?

A. No, sir; I don't remember the number.

Q. Do you remember where he lived in West Philadelphia?

A. He lived out near the park.

Q. What park?

A. Fairmount Park.

Q. Do you remember the time of day?

A. It was along about half-past ten or eleven o'clock in the morning.

Q. Did you say it was the twenty-third of January?

A. Yes, sir. 10

Q. Was your husband still on this job, do you know?

A. Yes, sir.

Q. Did you know that your husband had set up in his complaint that he left this work on the 14th day of January?

A. No, sir; I did not.

Q. If he did, that is not correct?

A. Because the men were working there the week  
of the twenty-third. 20

Q. If he set up the fact that he quit this job on the 14th that is correct, is it?

A. Well, if he did I don't suppose it is correct, according to the people.

Q. There can be no mistake in the date?

A. Oh, yes, there could be a mistake in the date, yes.

Q. There could not be as much a mistake as nine days?

A. Yes, there could be. 30

Q. It might have been the 14th of January when you called?

A. It may and it may not have been. I am under the impression it was the twenty-third day of January.

Q. Why did you say that it was the twenty-third day of January? What gave you that impression?

A. Because I had a grandson who was very ill on that day and I was waiting for the doctor to come downstairs and tell me —

Q. On the twenty-third day of January?

A. On the twenty-third day of January.

Q. There is no mistake in your mind that that is the date when this conversation took place?

10 A. No mistake in my mind and if I am not mistaken in his complaint —

Q. That is his lookout.

A. I cannot help that.

Q. Where was your husband on that day? Was he on the job?

A. He was in Bayhead.

Q. Bayhead?

A. Yes, sir. That is why I did the telephoning.

Q. Did you see Mr. DelVecchio at your home?

20 A. I did.

Q. Did you ever know him to come there and plead with Mr. Speece to go on with this work?

A. Mr. DelVecchio's conversation with my husband is something that I never paid any attention to. The only conversation I paid attention to Mr. DelVecchio was when he was at the table and the conversation was general.

Q. What day of the week was it when you called Mr. DelVecchio?

30 A. I told you Saturday morning.

Q. Saturday morning?

A. Yes, sir.

(Witness excused.)

ANDREW J. JEANNETTE, called as a witness on behalf of the plaintiff, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Garrison:

Q. What is your business?

10

A. Stone mason and builder.

Q. Look at those plans and see if you can find the fire place on them?

A. I never looked at the plans.

Q. Well, can you look at them now?

A. I never saw the plans before, and what is the use?

Q. Well, you don't know whether there was any change made in the plans or not?

A. No, sir.

20

Q. You don't?

A. No.

Mr. Garrison: That is all.

(Witness excused.)

Mr. Brown: May I ask Mr. Speece a question or two that I omitted?

The Court: Yes.

30

WILBUR D. SPEECE, recalled.

Further cross-examination.

By Mr. Brown:

Q. Mr. Speece, how many men did you have on this job between October when you started work and the date in January when you quit?

10 A. Some weeks I had seven; mostly four.

Q. For how long a period of time did you have seven men?

A. I think two weeks I had seven.

Q. Were they all carpenters?

A. All except the one laborer.

Q. And how long a period of time did you have four men?

A. All the time with the exception of the last three weeks I had three.

20 Q. Did you ever have just two men there?

A. The last week.

Q. Well, at any other time?

A. No, sir.

Q. Do you know what your labor cost was on this operation from the time you began until the time you quit?

Mr. Garrison: I object to that. That cannot make any difference in this case because he was to pay five hundred dollars a week.

30 Mr. Brown: He has testified that he was unable to go on with this work because of the fact that the defendant did not pay him according to the contract. Now I think it can be shown that he got more than enough to pay for the work that he did.

Mr. Garrison: It would not make a bit of difference. Here was the contract. He was to pay five hundred dollars every week. He did not do it and does not refute it. Now, there were other expenses besides payroll.

The Court: What difference does it make what the labor cost was? The question is did such contract exist?

Mr. Brown: Allow me an exception. 10

The Court: Yes.

(Witness excused.)

PLAINTIFF RESTS.

DEFENDANT'S MOTION FOR A NON-SUIT. 20

Mr. Brown: I move for a non-suit, if your Honor please, on these grounds:

The complaint in this case sets up a single contract. Now they bring in an entirely new theory and that is that they had not only an original contract but separate contracts for each individual extra claim that they make, and I say that the proof does not coincide with the complaint in that respect.

30 Secondly, the bill of particulars that is attached does not comply with the statute, nor does the lien claim, in that no dates are fixed when the materials were furnished and the work done, and there is nothing from the bill of particulars or from the complaint or lien claim which would indicate that this

work was done from any other warrant or contract than that which was the original contract made in October, 1925. They claim them as extras, not as new work. The verbiage used is: "For the erection and construction of the following extras not included in the above contract." There is absolutely no date as to when the contract was made or when the work and materials were furnished, and the courts of this state have stated that merely giving a beginning and an ending date in a general statement, in a bill of particulars, does not satisfy the requirements.

Another reason why there ought to be a non-suit in this case is this: our courts have decided repeatedly that there can be no recovery in a suit of this character on a contract unless the plaintiff shows a substantial performance of the contract itself, except perhaps where it can be shown where the defendant has thrown some obstacle in his way of performance. Now, the only obstacle which Speece alleges has been thrown in his way is the fact that we did not make payment according to the contract, and our courts have held in this state that that is not sufficient to warrant him in abandoning his contract. There is no substantial performance here. As a matter of fact he comes in and admits the building is not completed.

The Court: The difference between this case and the case you cite is that in this case there is testimony that the defendant requested this contractor to cease his operations. Such a request on the part of the defendant would take it outside of the operation of the rule of whether or not he substantially performed his contract. I will deny your motion.

Mr. Brown: Allow me an exception.

The Court: Yes.

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DEFENDANT'S CASE.

J. ANTHONY DELVECCHIO, the defendant, called as a witness in his own behalf, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Brown:

Mr. Brown: Have you any objection to the offer of this in evidence?

Mr. Garrison: No.

(The papers referred to, having been marked heretofore D1 to D16 for identification, for the defendant are received in evidence.)

The Court: What about the provision in this contract that no settlement or final payment be made until the contractor shall provide to the owner a release of liens?

Mr. Garrison: First, the contract is on file; and, secondly, it is nearly a year since this work was done, so there could not be any liens, now. That is the answer to that. And that contract was made long prior to these changes.

The Court: But you claim a balance under the contract and the Court of Errors and Appeals has said that where a builder contracts to supply a release of liens and brings a suit for any balance on the contract, the claim should be non-suited.

Mr. Garrison: That is where it is not on file. Now, this contract is on file. There cannot be any liens; so that relieves us of that.

10

The Court: Well, Mr. Brown didn't raise it.

Mr. Brown: I am willing to. I did raise this: that they are claiming extras under the contract and the contract does not anticipate extras. There is absolutely nothing said in the contract about extras.

Mr. Garrison: That does not make any difference. There is hardly ever a contract made that anticipates extras. They simply come along.

20

The Court: Let us proceed. We will let the jury pass on the amount due on the contract and what the reasonable sum for extras is if they were ordered.

Q. You live where, Mr. DelVecchio?

A. Philadelphia.

Q. Did you live in Philadelphia last October when you made this contract with Speece?

30

A. Yes, sir.

Q. Now, it has been testified to in this case that there was a plan drawn, a rough sketch, drawn on a single piece of paper, from which this contract was made up and that you agreed to the price of \$4200. Did you ever see such a plan?

A. I never saw such a sketch.

Q. What was the first plan that you did see of this operation?

A. The first plan I saw of this operation Mr. Speece brought me those four copies of the calendar and I demanded the blueprint from them.

Q. Are these the drawings that you refer to, marked D11, 14, 15 and 16?

A. Yes, sir.

Q. And where were they first exhibited to you? 10

A. In my office.

Q. And when?

A. Sometime in October.

Q. At Philadelphia?

A. Yes, sir.

Q. In whose presence?

A. His son-in-law and himself.

Q. Who is his son-in-law?

A. His name is on the contract. I cannot recollect off hand—Shuey. 20

Q. Stanley Shuey?

A. Yes, sir.

Q. Was Mr. Steelman there?

A. No, sir.

Q. Now, were these plans to be reduced to blueprint drawings?

A. Yes, sir.

Q. And were the blueprint drawings—was it your understanding that the blueprint drawings were to be any different from these? 30

A. It was to be the same, but it was never done.

Q. Was the contract drawn up at the time these card-board drawings were presented to you?

A. No, sir.

Q. How long was it after that the contract was drawn up?

A. He brought the contract and blueprint at the same time and he promised to change the blueprint and I looked over the contract and specifications and I took the man at his word. I didn't know anything about building, and I signed the contract and told him to go ahead with the work.

Q. Then when this contract which has been offered in evidence was presented to you the blueprint was presented?

10 A. Yes, sir, and I asked him to make a change about that sewing room and he said he would, but I never saw him do it.

Q. Is this sewing room shown on these plans drawn on the cardboard?

A. Yes, sir.

Q. Will you point it out to the jury?

A. There is the sewing room right there.

Q. Now, that floor plan drawing corresponds to which floor plan?

20 A. This floor plan right here, the sewing room is supposed to come right in here, which he promised to put the sewing room in that corner.

Q. Were the plans ever changed according?

A. No, sir.

Q. Is that the only difference that you noticed between the blueprint drawing and these cardboard drawings?

A. Yes, sir.

Q. At that time?

30 A. Yes, sir; and another window there between the cardboard and the blueprint drawing that was not on.

Q. Now, where is that? Point that out.

A. This shows for two windows right here, one on each side of the chimney, and this only has one.

Q. And that was on it?

A. Yes, sir.

Q. Now, assuming that the window had been put on the right of the chimney as it is shown on the blueprint plan, it would have opened up into which room?

A. The bedroom.

Q. Was that window—has that window since been put in?

A. Yes, sir.

Q. Was it put in by Speece? 10

A. Partly by him and finished by me.

Q. Is that one of the windows for which he is claiming an extra?

A. No; he is claiming an extra for an office room and bathroom.

Q. Now, when Mr. Speece started this work in October, how many men did he have on the job?

A. He put two men on and I objected to him, and he promised to put on more men, and he never did it until I put my brother on, and I took my brother 20 away and brought him in Bay Head, and he kept on putting men on and off. He never had more than three or four men on the job.

Q. Did the work progress slowly?

A. Very slowly.

Q. Did you ever say anything to Speece about that?

A. I always went to his home and complained about it. He always gave me some kind of story that he couldn't get men and would do the best he could, 30 and so forth; but he never acted.

Q. Was the job completed by Speece?

A. No, sir.

Q. Did Mr. Speece leave the job?

A. Yes, sir.

Q. Do you recall when?

A. Sometime in January.

Q. Now, when he left the job was it in the condition as it is pictured in these photographs?

A. No, sir; it was worse than that condition because I have put some of the work on. I have took Mr. Phillips, attorney, and I thought he was not—

Mr. Garrison: I object. It is not responsive.

10 Q. Well, wherein was it different when he left it than is shown on those photographs?

A. Well, the difference was that the celotex wasn't on. I put all the celotex throughout the house.

Q. Who was the last man on that job?

A. Bob Stark.

Q. Was Speece there the last day that Stark?

A. No, sir.

Q. Did you make an effort to have Speece complete the work?

20 A. I done everything in the world to let him finish up the house.

Q. What did you do?

A. I either offered to compromise with him to go ahead and finish the house, and he would not listen to me.

Q. When did you make that offer?

A. That after he quit.

Q. Do you know why he quit?

A. No, sir. I don't know to this very day.

30 Q. What was the compromise that you offered?

A. I asked him how much would he take to complete the house and he said it would take about \$800 and I said I would give him \$400 of it if he finished it, and this was right in his office at his home, and he would not even listen to me; and the next thing I knew he had suits brought against me.

Q. It has been pointed out in the evidence that the payments that were made in this house were, first, \$350, and that was in accordance with the contract?

A. Yes.

Q. The next one was \$500 and that was in accordance with the contract?

A. Yes.

Q. The next payment was \$350. Do you know why that was reduced?

Mr. Garrison: I object to that. 10

Q. Did you have a conversation with Mr. Speece about the payment of that?

A. Yes, He offered to take \$350 himself.

Q. Why? What was the conversation that you had with him?

A. I told him I didn't believe he done that much work that I should pay him \$500. Well, he said, "Give me a check for \$350 and next week you give me the difference." 20

Q. Did you have any understanding with reference to the next payment of \$350 or \$300?

A. No, sir.

Q. And \$146.20?

A. \$146.20—the men were on the job all holloaing for their money and I called him up and asked him to come up and pay these men and he said he couldn't get there and if I would not be kind enough to pay the men off, which I did. 30

Q. Then you made two five hundred dollar payments the last of December and the first of January?

A. Yes, sir.

Q. Did you object to the payment of \$500 to him?

A. No, sir.

Q. This contract seems to contemplate that there

was to be a balance paid within ten days after the completion of the work?

A. Yes, sir.

Q. As the work was progressing and as you were paying the money, did it seem to you as though there would be any balance after the work had been completed at the rate it was going on?

Mr. Garrison: I object to that. It is not relevant  
10 nor material. He had made a contract.

Mr. Brown: I want to show that the real reason was that Speece was progressing in this work so that he would have all his money and we could then whistle.

The Court: I will permit it.

Mr. Garrison: All right.

20

Q. (Repeated by the stenographer.) As the work was progressing and as you were paying the money, did it seem to you as though there would be any balance after the work had been completed at the rate it was going on?

A. No, sir.

Q. Did you say anything to Speece after that?

A. I went to his home and offered him that if he would complete the house his money would be ready  
30 for him at the completion of the house, and he asked me to loan him \$500; he had some lumber bill to pay at Bayhead. I said: "I wouldn't give you another penny because you haven't treated me right, and I don't think you have done as much work for the money as I have advanced you so far."

Q. Did you have Mr. Phillips write these two letters to Mr. Speece? (D12 and D13.)

A. Yes, sir.

Q. So far as you know did Mr. Speece ever reply?

A. No, sir.

Q. To either of these letters?

A. I don't know.

Q. Did he ever appear on the job again?

A. No, sir, not as far as I know.

Q. Did you ever refuse to—did you ever say to him that you didn't have the money to go on with this job and that he better lay off of it until you did get  
10 the money?

A. No, sir.

Q. As a matter of fact, did you have the money available to finish the job?

A. Yes, sir. I finished it myself.

Q. Since Mr. Speece has left this work did you finish the job?

A. Yes, sir.

Q. Is the house now complete?

A. Yes, sir.

Q. According to the terms and specifications?

A. Yes, sir.

Q. How much did it cost you to complete it?

A. Approximately \$3400.

Q. Now, Mr. DelVecchio, your contract calls for all new partitions, side walls and ceilings to be lathed and plastered. Did he do that work?

A. No, sir.

Q. Was there any plastering done by Mr. Speece in the house?

A. No, sir.

Q. Mr. Speece has said that there was a charge made—that there was a change made from lath to celotex; that is correct, isn't it?

A. Yes, sir.

Q. How did that change come about?

20

30

A. The change come about—he come to me one day and he said he couldn't get enough help and he thinks it will take too much time to put on the lath, and he thought by putting on celotex it would eliminate a whole lot of work and he would advance faster with the proposition. I said: "I don't care what you put on so long as you get it done, get over with it, because I want to do something with it."

10 Q. Well, was there understanding with you that that was to cost you more money?

A. No, sir.

Q. Did it require the taking off of plaster and lath in other parts of the house?

A. No, sir. He was never on the job and the men done as they pleased. There was nobody to give them orders, or what to save or what to spoil.

20 Q. There is a provision in your contract that all work is to be performed in a thorough and workmanlike manner. Do you know whether or not it was done in that fashion?

A. I really couldn't tell you, but what I can understand from the men—

Mr. Garrison: I object.

Q. You don't know?

A. No.

30 Q. Now, this provision in your contract with reference to the flooring, front and back room upstairs hardwood; dining room and living room hardwood floors; stair treads and risers to be of hardwood; bathroom composition flooring; kitchen Y.P. number one; laundry Y.P. number one; hall and first floor and room to be used as office, hardwood—was any of that flooring laid?

A. No; I done all that myself.

Q. Since Mr. Speece left the job?

A. Yes, sir.

Q. There is a provision in here that in the sheathing he had to use 1 x 10 S 4 S new sheathing. Did he use that?

A. He used the old sheathing that was on the house.

Q. Now, with reference to the porch floor and open porch to be composition flooring, marked off in squares, same on enclosed porch,—were those floors laid? 10

A. No, sir.

Q. Before Mr. Speece left the job?

A. No, sir.

Q. Do you know anything about the studding, whether that was all done?

A. I don't know anything about that.

Q. What about the doors, Mr. DelVecchio?

A. The only doors put on were the front door and two back doors.

Q. Were the doors actually on the job when he left there, ready to be hung? 20

A. No, sir.

Q. Were there any doors there?

A. The only doors there were the front door and two back doors.

Q. What about the interior finishing? This contract calls for all interior finishing to be cypress or basswood of good quality, including baseboards and trim for all openings and painted as desired by owner. Was this done by Mr. Speece before he left the job—any of that work? 30

A. No, sir.

Q. There is a provision—in this contract and the specifications, included in that,—for the placement of windows in the house. What have you got to say about that? Were all the windows installed?

A. The windows were put up but they were not installed. They were just placed in their places.

Q. They were not permanently there?

A. No, sir.

Q. Was the window sash hung in the frame?

A. No, sir.

Q. What about the hardware. According to this he was to place the hardware; to be of standard make, locks, etc.

10 A. I put the hardware in.

Q. Did Mr. Speece furnish any of that before he left?

A. No, sir.

Q. Did you do that when he left?

A. Yes, sir.

Q. And have you since installed it?

A. Yes.

Q. There has been some talk here about the heating, Mr. DelVecchio.

20 A. There was a steam heating plant in there—

Q. First let me call your attention to the fact that the contract calls for heating plant in the cellar removed to suitable place to make connection with flue in open fireplace.

A. There was a steam heating plant and he said the plant was no good, and he being a contractor I took that man's word, and he said just to put in an Island heater. He said that is a very good heater, and I bought the heater and he said: "You sign my

30 name to it so you can get ten per cent commission for it," and that is just what I did, but I paid for the installation of the heater.

Q. And you paid for the heater?

A. Yes, sir.

Q. How about the old heater that was there? Who removed that?

A. Nobody, I removed that.

Q. There has been some testimony here on the part of the plaintiff that the heating pipes had been installed before Mr. Speece left the job, is that correct?

A. The heating pipes were installed by the Island Furnace Company.

Q. Now, there is also a provision in your contract that the open fireplace in living room to be of red hard Sarah and Fisher or any other brick that may be desired by the owner. Now, was the Sarah Fisher 10 brick used?

A. No, sir.

Q. What was used?

A. What they call a Winslow white brick.

Q. How did that change come about?

A. I asked him to go on with the fireplace so they could finish that room up and he told me he couldn't get a red brick. I said: "What kind of brick can you get?" And he said: "I was up the street here and saw a fellow building a fireplace out of white 20 brick. I want you to come up and look at it and see what you think about it." I went up there with Mr. Speece, looked at the brick and saw the fireplace and said: "Go ahead, Mr. Speece, put on the white brick and get done with it."

Q. There is a provision in here for the painting of the interior and outside work. Was that done by Mr. Speece before he left the job?

A. Mr. Speece did only the priming and I finished it up, inside and outside.

Q. Was the laundry complete when he left there? 30

A. No, sir.

Q. Were there any bathroom fixtures installed by Mr. Speece before he left the job?

A. No, sir.

Q. Were there any bathroom fixtures provided by him for the bathrooms when he left?

A. No, sir.

Q. Have you since purchased them?

A. Yes, sir.

Q. Have you since installed them?

A. Yes, sir.

Q. Were the attic steps finished when he left?

A. No, sir.

Q. How about the cement steps outside?

A. Never touched.

10 Q. And the sidewalls? Were they cemented and sanded before he left?

A. The cellar side walls were put up, sanded and plastered, and he has not done that.

Q. In the bill of particulars which he has attached to his complaint there are some extra items, items that he calls extras, for which he is making a claim against you, one of which is altering laundry, kitchen and office location, putting the new partitions in laundry, closing up door in hall, cutting door from kitchen to dining room, cutting in window for bathroom, \$800. Did you make any agreement with him—

20

A. No. We had a verbal—

Q. Did you make any agreement with him that you would pay him \$800 for that work?

A. No, sir. The agreement I had with him due to the fact that the old folks had to come up upstairs, and downstairs, and according to Board of Health laws, you had to have a partition in order to close up the bathroom. I asked him how much more extra would he charge me to put that partition across in the bathroom and an extra window, and he agreed to put it in there for \$125, and I asked him to give me a specific order on that so I could sign it and it would be agreeable to both of us, which he has never done.

30

Q. Now, that was the making of the bathroom out

of a part of the laundry as it was originally planned?

A. Yes. He only had put the studding on it.

Q. What have you to say about the changing of the location of the laundry, kitchen and office?

A. I have nothing to say about that.

Q. Was there a change in location?

A. The only change was that we called one room the kitchen and the other room the laundry. There were no extras and nothing involved. He never touched.

10

Q. Did you have any discussion with Mr. Speece about that, that would indicate that you thought it would cost you any more money?

A. No, sir.

Q. What about the cutting of the door from the kitchen to the dining room? Do you know anything about that?

A. I don't know anything about that.

Q. Now, then, there is cutting and laying sub-joists and sub-floor in kitchen and laundry, \$275. Did you make any contract with Mr. Speece to pay him \$275 over and above your original contract price for that work?

20

A. No, sir; and I don't know why he cut the floors in the kitchen and laundry.

Q. Did you know what was done? Did you know it was done?

A. Yes, and I asked him why did he do it.

Q. Well, did you know that he intended to do that before it was done?

30

A. No, sir.

Q. Has he ever said anything to you about it?

A. No, sir.

Q. Have you ever said anything to him?

A. Yes; I made a complaint to him.

Q. What complaint did you make?

A. I told him I didn't want it. I thought the floor would be too weak for a composition floor that he wanted to put in, and I was satisfied with a pine floor.

Q. What did he say to that?

A. He said he would take the matter up with his foreman.

Q. He has an item in here for putting new window in the side of the house after the house was sheathed and weather-boarded, \$90. Did you have any agree-  
10 ment to pay him \$90 over and above the contract price for that work?

A. I don't know anything about that.

Q. Did you have any conversation with him about it at all?

A. No, sir.

Q. Now, he has an item in here of \$165 for the making of a sewing room, second floor front, after the house was laid out and drawn, taking up the  
20 hallway. Did you make any agreement with him to pay him that item over and above your contract price?

A. In fact, I never said anything to him. He proceeded with the building entirely with himself, and half the time he was not on the job.

Q. What was the conversation, if any, that you had with Mr. Speece with reference to the sewing room on the second floor? Did you ever talk with him about putting a sewing room on the second floor?

30 A. No, only at the time we signed the contract; that is all.

Q. Did you know that the blueprint plan did not make provision for it?

A. Yes, sir; but he told me he would make another copy of the blueprint which he has never done.

Q. Showing the sewing room?

A. Yes, sir.

Q. To correspond with the cardboard sketch?

A. Yes, sir.

Q. Did he do the work of putting in that sewing room?

A. He started and I finished it.

Q. How far did he get with it?

A. Well, he only had the studding up.

Q. He has an item in here of \$170 for putting closet full length of bedrooms.

A. I put them in myself.

10

Q. Had he done any of the work?

A. No, sir.

Q. Did you have any understanding with him about it?

A. No, sir.

Q. Did you have any conversation with him about them?

A. No, sir.

Q. Did you have any agreement to pay him six hundred dollars over and above your contract price  
20 for putting celotex on instead of lath?

A. No, sir.

Q. Nor, I think you have already testified as to how that came about. He has an item here of \$130 for cutting an opening for shower baths, relining of same, knob, concealing of pipes. What do you know about that?

A. I did that myself.

Q. Did you make any agreement with him to do  
it?

30

A. No, sir.

Q. Did you agree to pay him \$130 if he did that work?

A. No, sir.

Q. Built in shower bath and shower plumbing, \$300.

A. I did that myself.

Q. Well did you make any agreement with him that you would pay him \$300 if you did it?

A. No.

Q. He didn't do anything having to do with that shower bath?

A. No.

Q. He said he changed a partition about eighteen inches to provide for it; do you know anything about that?

10 A. I don't know anything about it.

Q. Now, then, there is an item of a thousand dollars that he said you agreed to pay him for change to colonial siding. What do you know about that?

A. I don't know anything about it. In fact, he drove me in his automobile and showed me a building—and showed me a siding in a home that was in Hammonton and asked me how I liked that siding. I said that would be satisfactory to me; to go ahead and put it on.

20 Q. Did you make any agreement with him that you would pay him a thousand dollars extra for that?

A. No, sir.

Q. Did he tell you that it would cost you a thousand dollars more?

A. No, sir.

Q. Now, then, there is an extra claim here of four hundred dollars for changing the location of the sun parlor from one side of the house to the other; new French door cut in living room instead of dining room, and change of fire brick from red brick to Winslow brick. What do you know about that?

30 A. There has been no changes at all between the enclosed porch and open porch; was placed just according to the plans.

Q. They are just as they appear on the blueprint plans?

Q. They are just as they appear on the blueprint plans?

A. Yes, sir.

Q. And on the cardboard plans that were offered in evidence?

A. Yes, sir.

Q. Was there any extra or French door cut in between the living room and the dining room?

A. No, sir.

Q. It is provided for in the plans, is it?

A. Yes.

Q. You have already testified about the change in the fireplace? 10

A. Yes, sir.

Q. Now, then, Mr. DelVecchio, did Mr. Speece ever offer to provide you with a release of liens of material men and mechanics before you paid him?

A. Never.

Q. Has he ever advised you that material men and mechanics have been paid?

A. No, sir.

Q. Who was your foreman on the job at the completion of this work? 20

A. My account?

Q. Yes, after Speece left there?

A. Mr. Stark.

Q. He is the same man that had worked for Mr. Speece while he was there for a while?

A. Yes, sir.

Q. How many men did you have on the job?

A. Mr. Stark had him and two men, and I believe the painter had three; about six or seven men. 30

Q. And how long did it take you, Mr. DelVecchio, to complete the work in that house?

A. It took me about eight weeks.

Mr. Brown: Cross-examine.

Cross-examination.

By Mr. Garrison:

Q. How many men did you say he had working on the job?

A. When he first started he had two men.

10 Q. What is the most he ever had working there?

A. The most he ever had on there was seven men. That was for two days.

Q. Two days only?

A. So far as I can remember.

Q. And at other times he had about how many?

A. Oh, I don't know; three or four.

Q. Didn't you say in your direct examination that the most he ever had was four and most of the time he had two? Didn't you say that? Didn't you say  
20 that?

A. He never had over four men on the job with the exception the one time he had seven.

Q. Why didn't you tell us in the beginning that one time he had seven?

A. I wasn't running Mr. Speece's business.

Q. You were running your own when you said he never had only four men on there, the most, at any time.

A. The most I saw on the job he had only four  
30 men.

Q. You said the most he had was four men?

A. Well, the most of the time I was there was only four men, when I appeared on the job.

Q. How often were you there?

A. Every time I had a complaint to make to Speece. He promised to show us —

Q. How often were you there?

A. Once or twice a week.

Q. Now, you got a letter from me, didn't you?

A. Yes.

Q. On February 12th, 1926. Now, is that the letter you got? (Handing paper to the witness.)

A. I don't remember.

Q. Well, you produced it to me a while ago or your lawyer did.

A. That may be it; I don't remember. 10

Q. Do you say you didn't get that letter?

A. I won't say either one way or the other.

Q. Do you mean to tell me that you don't know whether you got that letter from me or not?

A. No, I can't, Mr. Garrison.

Q. You cannot tell?

A. No.

Mr. Brown: He must have gotten it. I produced  
it. 20

Mr. Garrison: Wait, wait, wait. I did not interfere with you.

Q. Now, your name is. J. A. DelVecchio, isn't it?

A. Yes, sir.

Q. And your address is 5326 Diamond Street, Philadelphia?

A. Yes, sir. 30

Q. And you don't know whether you got that or not?

A. No, sir.

Q. Now, isn't it a fact that after you got that letter from me you went and saw Mr. Phillips and had him write these letters?

A. No, I retained Mr. Phillips before he wrote them letters.

Q. Well, the date of the Phillips letter is after this letter, isn't it?

A. That may be so.

Q. One is February 15th and the other February 27th, isn't it?

A. It may be so.

10 Q. A later date than this letter that you say you don't know whether you got or not?

A. So you say.

Q. Now, you had a plan of this work, a blueprint, didn't you?

A. I have had the calendars first and the second blueprint is here.

Q. You had this copy of this blueprint?

A. I have the calendars first.

Q. You had what?

20 A. The calendar sketch first.

Q. I am talking to you about this print.

A. I had this blueprint after I got the first sketch.

Q. And what did you do with the one that you had?

A. I kept it.

Q. Well, didn't you file it at Mays Landing?

A. No, sir.

Q. Didn't you file your contract? Your —

A. No, sir.

30 Q. Who did do it?

A. Mr. Speece.

Q. Did you have a copy of that?

A. Yes, sir.

Q. What did you do with it?

A. Kept it.

Q. Still got it, haven't you?

A. Yes, sir.

Q. And you referred to it whenever you wanted to?

A. No, sir; I referred to the both copies. I brought that to the attention of Mr. Speece time and time again.

Q. Where is the one you had? Let me have the blueprint you have.

(Mr. Brown produces a blueprint to Mr. Gar-  
rison.) 10

Q. There is no doubt you had the blueprint?

A. And had the other copies also.

Q. And you have kept it up to the present time, haven't you?

A. Certainly.

Q. And you turned it over to your lawyer when this suit was started against you, didn't you?

A. Certainly.

Q. Then you knew what it was; didn't you? 20

A. Certainly I knew what it was.

Q. You knew what it called for, didn't you?

A. Certainly.

Q. There is no doubt about that in your mind, is there?

A. No, sir.

Q. Now, were there any changes made from that plan?

A. I ordered no change. The only change I ordered were the bathroom fixtures for downstairs; 30 from upstairs to downstairs; and built an extra partition to comply with the Board of Health law.

Q. That is the only change you made?

A. That is the only change I requested Mr. Speece to do.

Q. Was there any other changes made?

A. No, sir; not to my knowledge.

Q. Oh! Now, Mr. DelVecchio, you know better than that. Don't you know that? Don't you know that where the laundry was intended to be was turned over to where the kitchen was?

A. The rooms are entirely the same way, only the name changed.

Q. Wait a minute. Let us see if it was. Do you admit that there was a change made from the laundry from one side of the house to the other?

A. The name was changed; "laundry" to the "kitchen."

Q. Do you admit that?

A. Yes, sir.

Q. That is one change?

A. There is no change; only the name was changed.

Q. Now, was the kitchen made larger?

A. No, sir.

Q. On this side?

A. No, sir.

Q. Remained the same?

A. Exactly the same.

Q. Sure of that?

A. Yes, sir.

Q. Now, was there any change in the office location?

A. No, sir.

Q. No change at all?

A. Only the names were changed, just as I told you. The rooms were not changed at all. There was three rooms there and the three rooms are still there.

Q. Was it necessary to put in new partitions in the laundry?

A. No, sir; only one partition which we agreed for the bathroom.

Q. Then there was a change?

A. Only in that room.

Q. Well, there was a change then?

A. Only in that room.

Q. Now, do you deny that it was necessary to cut a window in that room?

A. According to comply with the board of health law we had to put a window and we agreed to put a window there.

Q. And he did it?

A. He did.

Q. You are willing to pay for it?

A. Yes, \$125, but not \$800.

Q. But he is not charging you \$800 for cutting in a window. He is charging you \$800 for altering the laundry, kitchen and office location, putting in new partitions in laundry, closing up door in hall, cutting door from kitchen to dining room, cutting in window in the bathroom.

A. Well, he hadn't done anything but cut the window in the bathroom.

Q. He didn't change the laundry?

A. Not at all.

Q. He didn't change the office?

A. Not at all; no.

Q. Why, you said a moment ago he did.

A. He only changed the name.

Q. I see. So that \$800 you didn't agree to pay?

A. I never knew he charged me that much until I got your bill of complaint.

Q. Now, cutting and laying sub-joists and laying sub-floor in kitchen and laundry. Did you know that was done?

A. I didn't know anything about it. I found it

was done and I made a complaint to Mr. Speece. I told him I wanted pine wood floors just as the contract called for.

Q. Don't you know why that was done?

A. No, sir.

Q. Don't you know it was because you wanted a stone floor?

A. No, sir; I never requested anything.

10 Q. You mean to say to this jury that he was putting that stone floor in of his own volition?

A. I don't know what he was doing, and he don't know himself what he was doing.

Q. He was fooling away all this money and not saying anything to you?

A. I was the one was complaining about the money he was getting.

Q. You didn't want to pay him?

A. I paid him and paid him plenty.

20 Q. You never kept up your payments but twice during the whole period, did you?

Mr. Brown: I object to the question because it is based upon an improper statement of the facts.

Mr. Garrison: I withdraw that question.

Q. Of course, you knew about that new window in the front of the house?

30 A. The only window I knew about was the window that was put in the bathroom to comply with the board of health law.

Q. Aren't you familiar with your plans?

A. No, sir.

Q. Don't you know there was a window on the side of the house now that is not shown on the plans?

A. The window on the side of the house that does not show on the plans? Where is it?

Q. Now, was it put in the side of the house after the house was sheathed and weather-boarded?

A. Well, where was this window put in?

Q. In the office

A. In the office I don't know anything about it.

Q. Well, haven't you looked? Won't you look and see?

A. There is a window; that is the only window—that is there. (Indicating.)

Q. Isn't there a double window there? 10

A. I don't know anything about it.

Q. You don't?

A. No.

Q. Well, you saw this complaint that was served on you, didn't you?

A. Yes, sir.

Q. Why didn't you go and look? Are you living in it now?

A. No, sir.

Q. Haven't you seen that double window in there? 20

A. No, sir; never been there since he quit, till I finished the job.

Q. Is there anything on your original plan that shows the sewing room?

A. On my calendar sketch.

Q. I am talking about your plan?

A. It doesn't show there, and Mr. Speece agreed to give me another sketch which he has never done.

Q. He was drawing two sketches?

30 A. I don't know how many sketches he was going to draw, but he promised me another sketch.

Q. Did he put that up there—that sewing room?

A. No; he did not. He merely put the partition up and I finished it.

Q. Now, did he put those two closets in he told us about?

- A. No, sir.
- Q. Are there two closets in those bedrooms?
- A. Yes, sir.
- Q. Do they run the full length of the room?
- A. Yes, sir.
- Q. Well, does that show on your plan?
- A. No, sir.
- Q. Then they were extra, weren't they?
- A. No, I put them in myself.
- 10 Q. Oh, you put them in?
- A. Yes, sir.
- Q. Did you know that celotex was put in there instead of lath?
- A. Yes, sir.
- Q. Did you talk with him about it before?
- A. Yes, sir.
- Q. He says that the salesman was down there that wanted to sell that?
- A. He tried —
- 20 Q. Now, wait a minute. You will get plenty of time to answer. He says that the salesman was down there when you were discussing it?
- A. Yes, sir.
- Q. And discussed the price, is that true?
- A. Yes—not discussed the price. He wanted me to admit that the sale was made to order for him.
- Q. He did not discuss the price?
- A. No, sir; not with me.
- Q. Did you agree to have it done?
- 30 A. I agreed to anything so long as he finished the house up.
- Q. No, you didn't?
- A. Oh, yes, I did.
- Q. No, no, you didn't.
- A. Yes; I did.
- Q. Well, the question is did you talk about the celotex with him?

- A. He talked to me about it.
- Q. And did you see the salesman there that day?
- A. He brought the salesman up there with him and wanted me to admit an order to him, which I wouldn't do it.
- Q. Did you talk to him about it?
- A. No, sir.
- Q. Never said a word?
- A. No, sir.
- Q. Just "Go ahead and do what you please?" 10
- A. No, I didn't say "Do what you please." I wanted the house to be completed.
- Q. Now, does the original plan show any shower bath?
- A. No, sir.
- Q. Was there any provision made for shower bath?
- A. No, sir.
- Q. There was not? 20
- A. No, sir.
- Q. You didn't cut away and put in a partition for it?
- A. No, sir.
- Q. Didn't do that, eh?
- A. No, sir.
- Q. Now, let us take up this colonial siding?
- A. I don't know anything about it.
- Q. Don't know a thing about it?
- A. No, sir. I expected a siding on there, but I didn't know what he was going to put; I didn't know 30 that he was going to put a colonial or whatever kind of siding. I expected a siding.
- Q. Wasn't it the understanding that he was to use all the old material?
- A. There was no understanding whatever. He wanted to put a siding there. I don't know anything about a siding.

Q. Wasn't there an understanding between you and Mr. Speece that he was to use all the old material in the old building?

A. The understanding between me and Mr. Speece was to finish the work according to the contract.

Q. Wasn't there an understanding between you and Mr. Speece that he was to use all the old material in the old building?

A. No, sir.

10 Q. No such understanding?

A. No, sir.

Q. Never had any such talk about that siding?

A. No, sir.

Q. Did you ever go with Mr. Speece up to see the Ruberton home?

A. Yes, sir.

Q. You told him you wanted it like that?

A. No, sir. He asked me if I wanted a siding like that?

20 Q. And you didn't go up to see the Ruberton home just before you made these plans?

A. He drove up to show me the siding, if I wanted a siding like that. I said: "It don't make any difference to me."

Q. Just before these plans were drawn did you and Mr. Speece drive up to see that home that same day? That was before these plans were drawn?

A. Yes, sir.

30 Q. And you talked about siding right away, didn't you?

A. No, we didn't, and I didn't know anything about siding.

Q. When did you talk about it?

A. Just showed me the house at Hammonton and wanted me to build one just like it, and it is far from it.

Q. I thought you said a moment ago that you and Mr. Speece went up there and showed you that siding and asked you if you wanted one like it?

A. Yes, sir.

Q. Was that the same time?

A. Yes, sir.

Q. Now, was there any change made in the sun parlor?

A. No changes at all. The sun parlor is just where it is according to the blueprint. 10

Q. It is?

A. Yes.

Q. You had no conversation with him about the fire brick?

A. No, sir; only at the time he brought me to show me the difference between the red brick and the white brick.

Q. Did you go up there with Mr. Jeannette and him and talk about this new fireplace?

A. No, I went up to Jeannette's home. 20

Q. You went up to Jeannette's home and had a talk about it?

A. I talked with Mr. Speece, not with Mr. Jeannette.

Q. You didn't talk with Mr. Jeannette at all?

A. No, sir.

Q. Were you in the same room with him?

A. Yes, sir.

Q. So you didn't have anything to say to him?

A. I had nothing to do with Mr. Jeannette. 30

Q. Did you talk about these things?

A. No, sir; I talked to Mr. Speece.

Q. Not a word was said?

A. Not a word was said.

Q. When did Mr. Speece actually quit?

A. In January sometime, about the fifteenth or sixteenth.

- Q. Yes.
- A. Somewhere, I believe, around that time, on or about.
- Q. On or about the fifteenth of January he quit?
- A. Around that time. I don't remember the exact date.
- Q. How many weeks was that from the time he commenced?
- A. I couldn't tell you. It was from October.
- 10 Q. Can you reckon it up now and tell me?
- A. No, I can't. Not right off hand.
- Q. At least twelve weeks, was it?
- A. Yes.
- Q. And during the twelve weeks, you paid him how much money?
- A. Close to three thousand dollars.
- Q. Let's be exact about it. Twenty-nine hundred and how much? \$2996.20 you paid him?
- A. Yes, sir.
- 20 Q. Well, you said something while ago about some bathroom fixtures. Did you furnish those bathroom fixtures?
- A. Which ones?
- Q. Well, the ones that are in your house now?
- A. The ones upstairs I furnished, and the ones that were downstairs—that ones that were upstairs, I brought them downstairs and which Mr. Speece agreed to put them down and connect them up, which he never did.
- 30 Q. Did Mr. Speece furnish any bathroom fixtures?
- A. No, none at all.
- Q. Who is Mr. Grillo?
- A. A plumber in Hammonton.
- Q. Did he furnish fixtures?
- A. Not for me.
- Q. Whom did he furnish them for?

- A. He hasn't done my work.
- Q. When did he furnish any fixtures for what was your work?
- A. He only done a little roughing for Speece.
- Q. Whom did he furnish the fixtures for? That is the question I ask. I ask you that question?
- A. What fixtures?
- Q. Did he furnish any fixtures?
- A. No fixtures at all, only a bath tub.
- Q. Oh?
- A. That's all.
- Q. Now, in connecting these up, he didn't furnish more than a bath tub?
- A. That is all he furnished, a bath tub.
- Q. Why didn't you tell us that before?
- A. Just didn't come to my mind, and I paid for that bath tub, too.
- Q. Do you remember being in Philadelphia with Mr. Speece one day in January? Do you?
- A. No, sir.
- 20 Q. Did you never leave Mr. Speece at 218 Walnut Street while you went hunting money?
- A. The only time I met him was the signing of the contract at my office.
- Q. You never met him in Philadelphia?
- A. No, sir.
- Q. You never told him you were going down Dock Street to see if you were going to get money?
- A. No, sir; never tell anybody my business.
- Q. Never told him you were to the bank and they wanted a financial statement and you couldn't get it, and you were going to Dock Street to get the money?
- A. No, sir.
- 30 Q. And you say you have never been in Philadelphia with Mr. Speece except the time you signed the contract?

A. That is all.

Q. That is all?

A. Yes, sir.

Q. That is the only time you have ever seen him in Philadelphia?

A. That is the only time I have ever seen him in Philadelphia.

Q. Now, you say that when you came down to make a payment to Mr. Speece that Mr. Speece told you  
10 \$350 would satisfy him?

A. Yes, sir.

Q. He told you, I suppose that the \$142.20 would satisfy him, too?

A. No, sir. He told me to go ahead over the phone and then I would advance more money the following week.

Q. Then you were to raise more money the next week?

20 A. No, I had the money all ready for his contract. I was only waiting for him to finish the house.

Q. Didn't you know that he had furnished a lot of materials there?

A. I don't know what he furnished. I was looking for him to finish the house.

Q. Why, you were there twice a week. Didn't you know that he had furnished this extra stuff?

30 A. I don't know what was extra. I was there watching him—I was there watching the house to be completed, and it was never completed.

Q. Didn't you know your contract was on file?

A. I knew my contract was on file.

Q. Didn't you know that they couldn't lien your property if you did pay him according to your contract?

A. I don't know anything about the building laws.

Q. Well, you tell the jury you had the money all the time?

A. Certainly, I did.

Q. What about that conversation that Mrs. Speece had with you?

A. I don't know anything about that conversation.

Q. Did you ever have a telephone conversation with her—over the phone? 10

A. Never.

Q. Then you do know something about it—that you never had it?

A. I never talked to her over the phone. The only time I talked with her was at her home over the dinner table.

Q. And you didn't tell her that you would try to get the money and take it down?

A. No, sir.

Q. When was that you told Mr. Speece to quit? 20

A. I never told him to quit.

Q. Never told him to quit?

A. No, sir. In fact, I begged him to finish it.

Mr. Garrison: I think that is all.

(Witness excused.)

ALBERT STARK, called as a witness on behalf of the defendant, being duly sworn, was examined and testified as follows: 30

Direct examination.

By Mr. Brown:

Q. Mr. Stark, where do you live?

A. Hammonton, New Jersey.

Q. What is your business?

- A. Carpenter and builder.  
 Q. You do work by contract?  
 A. Yes, sir, I do.  
 Q. As well as ordinary carpenter work?  
 A. Carpenter work and building houses, not on a large scale, small scale.  
 Q. Do you know Mr. Speece?  
 A. Yes, sir.  
 Q. Do you know Mr. DelVecchio?  
 10 A. Yes, sir.  
 Q. Did you work for Mr. Speece and Mr. DelVecchio on that operation?  
 A. I did.  
 Q. When did you start to work there, do you recall?  
 A. About December of last year, about the ninth or tenth, somewhere around about that.  
 Q. And did you continue on the job from then until the time when Mr. Speece left the job?  
 20 A. Yes, and after, because I called up Mr. Speece, asked him if I would continue on and Mr. Speece said yes, to keep on working until "I give you notice to stop," and after the men stopped I kept on for two weeks to put the house in kind of shape for the winter.  
 Q. In other words, when the other men quit it was in no shape to leave it for the winter?  
 A. No, sir; positively no.  
 Q. Now, when you went on this job what plan, if any, did you see of that operation?  
 30 A. The only plans I saw was this plan that was lying in the next door cellar, and that was the only place I ever saw it—was in the cellar.  
 Q. Did you ever see a plan on a cardboard like this that was tacked up on the side of the wall of any room in that house?

- A. Positively not.  
 Q. Did you ever see a plan on the cardboard like this that had not only the front elevation but floor plans on it as well?  
 A. Not until I was fixing up the cellar. I saw a plan something similar to that.  
 Q. On a single sheet?  
 A. No, on Mr. Speece's calendar.  
 Q. On more than one calendar?  
 A. Yes, there were three or four of them. 10  
 Q. Well, will you look at these three or four cardboard sheets, marked D11, 14, 15 and 16, and I ask you whether or not those are the plans that you saw or copies of them?  
 A. Yes, they were something similar to this, they were lying in the cellar when I was finishing up the cellar. Thinking they were of no use —  
 Mr. Garrison: I object. It isn't a question of what you thought. 20  
 Q. You were employed there as a carpenter, were you not?  
 A. Yes, sir.  
 Q. When Mr. Speece left that job do you recall when it was?  
 A. Not exactly, I couldn't tell you the date. But I know it was along the middle of January or February or somewhere thereabouts.  
 Q. When Mr. Speece left that job had any of the walls been plastered? 30  
 A. Positively none, no, sir.  
 Q. Do you know anything about the manner in which the work was done? What about the floors? Were they level?  
 A. No, the plans weren't—the floors weren't level.

I put the hardwood floors in there and they positively were not level. Some places I had to put three-quarters inch in to level the floors out.

Q. What about the joists around the doorways? Were they —

A. The joists in the kitchen and the laundry, as they referred to, they were chipped away and they would not hold composition flooring.

10 Q. What about the openings for the doorways? Were they straight so that you could hang a door?

A. No, the back door was an inch and a half out of plumb. When we did hang a door it would swing in, so it stood right back.

Q. What did you have to do to straighten it?

A. It is still that way. We couldn't straighten anything. It was an outside partition; couldn't do a thing with it.

Q. Has it been left that way?

20 A. It is still that way.

Q. What about the flooring? Was there any flooring in when Mr. Speece left there? And sub-flooring?

A. That was in the old house —

Q. Was that flooring that was originally in the old house?

A. Oh, yes.

Q. And was it flooring that Mr. Speece put in?

A. No, sir; it was original flooring that was in the old house.

30 Q. What sheathing was used on the house by Speece?

A. Why, most of the old sheathing was used on the side walls. We had new sheathing for the roof.

Q. Was there any flooring put in the porch, either porch, the open one or —

A. The open porch had pine floor in it.

Q. Was that put there by Speece?

A. Yes, pine floor on the open porch.

Q. Did you know that the contract called for composition flooring?

A. No, I didn't know anything about that.

Q. Is it still pine flooring?

A. Oh, yes, still pine flooring.

Q. Was any interior finishing in the house, Mr. Stark, when Speece left there?

A. Not one bit, no. 10

Q. Were there any doors hung on the interior of the house?

A. No, in fact, there were no doors hung at all. The front door was hung with two or three nails and the side door was hung with two or three nails and the back door was just leaning up in the opening. There were no doors swung at all. There was no hardware put in the house by Mr. Speece, neither butt hinges nor locks.

Q. Have the doors since been hung? 20

A. Yes.

Q. By whom?

A. I hung the doors.

Q. What about the windows?

A. They are all in the house with the exception of the sun parlor, which whenever we went to the mill we couldn't find no doors; we couldn't find no trace of them, so they sent me another party's windows and we put them in there, but they were not right, so we had to take them out and get the original windows that went in, so there were no windows in the sun parlor. 30

Q. Well, the windows that were there, Mr. Stark, were they finished?

A. No, they were not trimmed on the inside. They were fitted but they were not trimmed on the inside.

Q. Now, do you know whether or not Mr. Speece had provided the hardware with which to finish this job?

A. Not that I know of.

Q. Did you find any hardware there when he left it?

A. No. Mr. DelVecchio gave me the hardware to finish the house.

10 Q. Was there any evidence of any hardware having been provided before the completion of the house.

A. No.

Q. What do you know about the heating plant? Was anything done with that?

A. Not that I know of. There is an Island heater put in there. There was a steam heater put in and it was removed out.

Q. Well, do you know whether Speece did any of that heating work?

20 A. Not that I know of. A man named Smith put it in for the Island people, but who paid for it I don't know.

Q. Was that after Speece left?

A. That was after Speece left.

Q. Where was it when he left?

A. Sitting in its old place.

Q. Had it been removed from its place?

A. No.

30 Q. How about the fireplace? Had that been completed when Speece left?

A. That I couldn't say whether it was finished or not. It was started but I don't think it was finished. I couldn't say whether it was finished or not.

Q. You don't know whether any work was done on that fireplace?

A. Yes, it was started on, anyhow.

Q. But after he left was there any work done on the fireplace that you know of?

A. That I couldn't exactly say, I wouldn't say.

Q. How about the painting? Was the painting done inside or out of the house?

A. Just the priming, one coat outside, not all outside, about two-thirds of it was primed outside. Then the painter came to me and he said: "Bob, are you going to get this paint?" I said: "I have nothing to do with it." 10

Q. What about the laundry? Was there any laundry tubs put in the laundry before Speece left?

A. No.

Q. Was the concrete floor put in there before he left it?

A. No.

Q. What do you know about these copper flashings?

A. Well, I know regarding copper flashings we never put on asbestos roofing without copper flash- 20 ing. The asbestos is what we call an everlasting roof. It will be there while the house is there, and to put tin or anything in there is only a matter of five or six years we would have to pull the roof off and reflash it; so, therefore, they put copper flashings in it.

Q. Every roof has to be flashed?

A. With something, yes, sir.

Q. With something?

A. With something, yes. 30

Q. Now, do you know whether or not there were any bathroom fixtures furnished by Speece before he left the job?

A. There was a bath tub there, but that was all, it was not put in.

Q. Was it set?

A. No, it was down in the living room. It laid in the living room.

Q. Were there any bathroom fixtures installed in the bathroom downstairs?

A. No, there were not.

Q. What about the attic steps? Were they finished?

A. No, sir.

Q. What about the cement steps?

10 A. They were not finished either.

Q. What about the side walls? Were they cemented and sanded?

A. No, sir.

Q. Did you do that work?

A. No. We got Mr. Slack to do that work.

Q. That was done after Speece left it?

A. Yes, sir.

Q. Now, then, Mr. Stark, Mr. Speece claims an extra of eight hundred dollars for altering laundry, kitchen and office location, putting in new partitions  
20 in laundry, closing up the door in hall, cutting door from kitchen to dining room, putting in window for bathroom. Now, first, what do you know about the altering of the laundry, kitchen and office location?

A. I don't know. They couldn't be altered because —

Mr. Garrison: The question is what do you know?

30 Q. Well, was the location altered?

A. No, they were not altered for the simple reason you have like—for the simple reason you may alter this room to the other room naturally, and come back here again. It is just a name.

Q. Will you look at that blueprint plan there

where it shows laundry, office and kitchen, and tell me whether or not the partitions are in there now and are as are shown on that plan?

A. They are as shown on this plan now, for the simple reason they cannot be removed because they are carrying the partitions for the upstairs joists.

Q. If you change the location of the laundry, kitchen and office, it simply means the changing of the names?

A. That is all. The office is in here, the kitchen is in here and the laundry is in here. It is merely a matter of changing the name. He can change back tomorrow to these if he wants to. It does not make a particle of difference. 10

Q. Now, Mr. Stark, there has been also mention of putting in new partition in laundry. When Mr. Speece left what had to be done with reference to the new partition in the laundry?

A. Two partitions, two by four by nine feet.

Q. Were they ready for lath?

A. Ready for celotex, yes. 20

Q. It was not a completed partition?

A. No, sir.

Q. Then he mentioned closing up a door in hall. Did you know anything about a door in hall?

A. Well, all there was to closing that door was putting one stud down the center and it was closed.

Q. It simply meant putting a stud down the center of the opening?

A. That is all.

Q. And that is all that would involve — 30

A. That is all that would involve because I was the one done it, and that is all that was done to it.

Q. What do you know about cutting door from kitchen to dining room?

A. Mr. Speece called me in and asked me about

it. He said: "We want a door to go from this dining room here into the kitchen." This is the kitchen now, see?

Q. Yes.

A. And he asked me how to get that done. I thought it was a very foolish trick for a contractor to ask a carpenter —

Mr. Garrison: I object to that.

10

A. Anyhow, we cut one in here in the corner, and all that was was mere cutting these two studs out and putting a leader across and we had the door there.

Q. There was nothing in here about cutting the window for the bathroom. Just tell what—it is said by Mr. Speece that that is a downstairs bathroom. Do you know anything about that?

A. The opening was there, the casing was there  
20 but it was not put in until after Mr. DelVecchio took hold of the job.

Q. There is an item here of \$275—by the way, the amount that Mr. Speece claims for making that alteration about which you have just testified is \$800. Would it cost \$800 to make those changes?

Mr. Garrison: I object. There is no proof here that he is capable of giving an expert opinion on the prices.

30

Q. How long have you been a carpenter and builder?

A. I have been a carpenter all my life. I learned it with my father. I have been for the last four years taking contracts off and on.

Q. You have been bidding on contract work?

A. Off and on.

Q. Do you know the cost of material and labor in connection with building?

A. Yes, sir.

Q. Now, is \$800 a fair and reasonable cost about the alterations about which you speak?

A. I think it was more than reasonable. I think it would be very reasonable.

Q. How much do you think it is over?

A. For altering this door —

10

Q. Assuming that had been done and completed?

A. To change it?

Q. The changes of altering the laundry, kitchen and office location, putting in new partitions in laundry, closing up door in hall, cutting door from kitchen to dining room, cutting in window for bathroom—assuming that had been done and completed, would it have been worth \$800?

A. Positively not.

Q. How much would it have been worth?

20

A. About \$50 at that.

Q. Now, there is an item here of \$275 for cutting and laying sub-joists, laying sub-floor in kitchen and laundry. Do you know anything about that?

A. No. When I was there that was practically done.

Q. Had it been done? What had been done?

A. The joists were all chipped, ready for composition floor, and they had a shingle lath and base-board put down there.

30

Q. It was laid in sub-joists?

A. No, it was not laid in sub-joists. The other joists were laid by a piece of shingle lath put down, and the boards put in between the joists.

Q. Well, look at those pictures and tell me whether you could find a picture of the kitchen and laundry there?

A. Yes, this is one of the kitchen.

Q. What is this?

A. This is the kitchen.

Q. Referring to D1. What is called the sub-joists in that picture?

A. I suppose the half of this joist underneath that board. There is a shingle lath down through there, and these are set right on it. I suppose they are called sub-joists.

10 Q. Does that show any cutting away of those four joists?

A. Yes, up here on a point. They are chopped off both sides.

Q. In your opinion was the cutting away of those joists necessary for the laying of the composition flooring?

A. Not exactly, no.

Q. Did it tend to weaken the floor?

A. Oh, yes.

20 Q. How about the laundry? Have you got that on there?

(Recess to ten o'clock the following morning.)

November 9, 1926.

(Trial resumed pursuant to adjournment.)

ALBERT STARK, recalled.

Direct examination (resumed).

10

By Mr. Brown:

Q. Now, Mr. Stark, there is an item here of \$90 for cutting a new window in side of house after house was sheathed and weather-boarded. Do you know anything about that?

A. Not one bit, no, I don't know anything about that. The window is referred to there—the opening was there when I went on the job. It was not weather-boarded. It was a single —

20

Mr. Garrison: I thought you didn't know anything about that.

The Witness: No, I didn't know anything about that.

Q. Well, is there a window in the house that does not show on the plan?

A. Yes, there is a twin window in here. There is only a single showing on the plan.

30

Q. Is that the window to which you referred, that there was an opening there?

A. Yes, there was a twin opening there.

Q. When you went on the job was the house sheathed and weather-boarded?

A. No, the house was partly sheathed but no weather-board on it at all.

Q. Were the window frames put in?

A. No, the window frame was not in.

Q. Nothing but the hole there?

A. Nothing but the opening.

Q. Did that in your judgment necessitate extra labor?

A. Extra labor and extra frame.

10 Q. An extra frame?

A. An extra frame.

Q. Is \$90 an unreasonable cost for that work, that extra?

A. I think it would be a little bit too large.

Q. How much do you think it ought to be?

A. About fourteen dollars for the extra frame.

Q. Now, then, there is an item here of \$165 for making a sewing room on the second floor front after the house was laid out and drawn, taking part of hallway. Do you know anything about that?

20 A. This room was there before the roof was put on. The partition was up for the sewing room before the roof was put on. What change was made I don't know before that.

Q. How does that lay-out now of the sewing room change the plan as it appears in the blueprint there?

30 A. The sewing room is up in here. This partition was moved to one side and then there was another partition put in there. That is all the change in the room.

Q. It meant an extra partition?

A. Meant one extra partition. This was moved over here and another new one put in over here.

Q. Now, Mr. Stark, were those partitions complete when Mr. Speece left the job?

A. No, sir.

Q. How far had they progressed?

A. Studding up only.

Q. Any celotex on the partitions?

A. No, sir.

Q. He makes a charge here for \$600 for putting the celotex on instead of lath throughout the house. Were there any celotex on the job?

A. Nothing except a few sheets upstairs on the ceiling, and a few sheets on the side of the stairway before the horses were put up. 10

Q. Who put the rest of the celotex on?

A. I don't know the man.

Q. It was after Mr. Speece left the job?

A. It was after Mr. Speece left the job.

Q. Do you know anything about this item of cutting in opening for shower bath and relining of same, knob, concealing of pipes, \$330?

A. That was done after Mr. Speece left the job.

Q. Was anything done by him before he left the job? 20

A. Nothing except the partition put up for the bathroom, that was all.

Q. The original plan called for that?

A. Well, it is in the plan—the plan should be—the bathroom is back here now. Now there is the partition we are referring to. That partition was up. The shower bath comes in right here.

Q. Then there was nothing there but what the plan called for? 30

A. Nothing.

Q. And was that complete?

A. No, sir.

Q. Wherein was it not complete when Mr. Speece left?

A. It was not celotexed or plastered.

- Q. Is that a new partition across there?  
 A. No, it is an ordinary partition to close the bathroom off from the hall.  
 Q. Was there a new partition put up there? Can you tell that?  
 A. What do you mean, from the old house?  
 Q. Yes.  
 A. Yes, it was a new partition.  
 10 Q. He has an item of \$300 for built-in shower bath and shower plumbing. Was there any shower bath put there or any plumbing for the shower bath?  
 A. Not by Mr. Speece.  
 Q. I mean at the time Mr. Speece left?  
 A. No, sir.  
 Q. Has it been put in since?  
 A. Yes, sir.  
 Q. By him?  
 A. By Mr. DelVecchio.  
 20 Q. Item of change to colonial siding, \$1000?  
 A. That is something I don't know anything about.  
 Q. When Mr. Speece left the job was all the siding on the house?  
 A. No, sir.  
 Q. How much of it remained to be put on?  
 A. About 350 feet remained to be put on.  
 Q. The copper flashings, \$60; are those the flashings about which you talked yesterday underneath the asbestos roof?  
 A. Yes, sir.  
 30 Q. He has an item here of \$400 for change of location of sun parlor from one side to the other and open porch; new French doors cut in living room instead of dining room and change of fire brick from red brick to Winslow brick. Now, do you know anything about the change of location of the sun parlor from one side to the other?

- A. I don't know anything about the location that would have to be pulled down.  
 Q. Assuming that no work had been done on either porch, and the position of the two porches was changed from one side to the other, would that involve an extra?  
 A. No, sir.  
 Q. Would it require any extra labor or material?  
 A. No, sir.  
 10 Q. Do you know anything about this item of new French doors cut in living room instead of dining room?  
 A. No, there are French —  
 Q. Are there any French doors or were there any French doors cut in there by Mr. Speece that don't show on the plan?  
 A. There were no French doors hung by Mr. Speece at all.  
 20 Q. Were there any openings for French doors when he left that do not show on the plan?  
 A. No, the openings are on the plan.  
 Q. Mr. Stark, in your judgment how far had this building progressed toward completion at the time Mr. Speece left the job?  
 A. I judge about one-third.  
 Q. Still about two-thirds of it yet to be done?  
 A. Still about two-thirds of it yet to be done.  
 Q. What did remain to be done in order to complete the job?  
 30 A. Why, finish the weather-boarding outside, put the windows in the sun parlor, put the steps on the outer side, sand the walls on the outside, celotex the inside, plaster the inside and trim it out—I refer to that by putting the trim on the windows, hang the doors, put in the hardwood floors, put in the bathroom fixtures, all plumbing fixtures. It was all to be done when Mr. Speece left the job.

Q. The heater—the heater had to be installed?

A. No, the heater was partly installed when he left the job.

Q. The new heater?

A. Partly installed.

Q. When Mr. Speece left the job was the building in such shape that it would have to be painted?

A. Oh, yes.

Q. To complete it?

10 A. He had it primed, about two-thirds of it primed on the outside. That was all that was done.

Q. Well, the painting was not finished and would have to be finished to complete the job?

A. Yes.

Q. Now, will you please look at exhibits D1 to 10, photographs that have been offered in evidence and tell me whether or not they fairly represent the condition of that house at the time Mr. Speece left the job?

20 A. No. The kitchen is further advanced now in this photograph that Mr. Speece left the job. The celotex wasn't on when he left the job.

Q. Who put that on?

A. I did with a helper, and that was the kitchen. The fireplace I believe had started when Mr. Speece left the job. Whether it was finished or not I couldn't say, but the celotex was not on the living room, which showed in this photograph.

Q. You put that on?

30 A. I put that on.

Q. After Mr. Speece left the job?

A. After Mr. Speece left the job, by orders of Mr. DelVecchio. The celotex wasn't on here, the hall downstairs. The celotex wasn't on when Mr. Speece left the job. The photograph is further advanced than when Mr. Speece left the job. The celotex was not on that room when Mr. Speece left.

Q. What room is that you are talking about?

A. This is the kitchen.

Q. All right.

A. Celotex was on the ceilings of this room when he left the job; that is the front bedroom, the attic was as shown here when Mr. Speece left the job, showing that the siding is not on the side. You can see through the space.

Q. Through openings at the end?

A. Openings in the weather-board and sheathing. 10 This outside was as Mr. Speece left the job only it only had one priming coat; therefore, it shows finished there. This was as Mr. Speece left the job, with the exception that it is finished painting there now. This was, as I think, when he left the job, showing the siding of 350 feet that was put on afterward, and this is as Mr. Speece left the job.

Q. So that except in the respects to which you have referred those pictures properly picture the condition of the building as it was when Mr. Speece 20 left it?

A. Yes, sir.

Q. What materials, if any, were on the job when Mr. Speece left there?

A. We have the celotex only when Mr. Speece left the job, the put on the walls.

Q. Sufficient to complete?

A. Yes, we had celotex sufficient to complete.

The Court: Let me see those photographs. 30

(The photographs D1 to 10 inclusive, are handed to the Court by Mr. Brown.)

Q. Were you there during all the time that Mr. Del Vecchio had taken upon himself the completion of this building?

A. Yes, sir.

Q. Were you in charge of the completion?

A. Yes, more or less I was. He gave me full charge of it.

Q. How long did it take to complete the work?

A. I should judge from about seven to eight weeks.

Q. And how many men did you have on the job yourself?

10 A. I had four—five painters and a helper and myself.

Q. Throughout the entire seven or eight weeks?

A. Yes, sir.

Q. It has been testified to by Mr. Del Vecchio that it cost him approximately \$3400 to complete that building. Is that a fair and reasonable estimate of the cost of completion?

A. Yes, I judge that would be about the price to complete the building after Mr. Speece left the job.

20 Q. You have been paid, have you, in full for the work you did after Mr. Speece left the job?

A. Yes, sir.

Mr. Brown: Cross-examine.

Cross-examination.

By Mr. Garrison:

30 Q. How much were you paid?

A. I was paid a weekly salary. I was doing day's work for Mr. DelVecchio. I couldn't tell you the amount now all told.

Q. How much did you get a day?

A. I was getting one dollar an hour of Mr. DelVecchio.

Q. Well, how many hours did you work a day?

A. Sometimes nine and sometimes ten.

Q. Did you keep any time book?

A. Yes, sir.

Q. Let's see it?

A. I haven't got it here. When I worked for day's work he is the man to keep time. I turned my time over to Mr. Del Vecchio every week.

Q. Did you keep the time book?

A. No, I am contracting myself—when I am contracting myself, but not when I do day's work for another man. He is the man who keeps the time 10

Q. Now, you worked, you say, seven weeks?

A. Seven or eight weeks.

Q. And only you and a helper?

A. Only me and a helper.

Q. And you finished it, just you and a helper?

A. That is right.

Q. Now, you don't know how much money he paid 20 you?

A. No, with any accuracy.

Q. How much were you paying your helper?

A. Fifty-five cents an hour.

Q. And the two of you finished that work?

A. Yes, sir.

Q. Now, when did you go to work on this job?

A. I couldn't tell you the date. I don't keep the date.

Q. Well, I will tell you the date. On or about De- 30 cember tenth. Is that when you began?

A. When I began to work for Mr. Speece, yes.

Q. How many men were working a week then?

A. That is a different case, but Mr. Speece —

Q. How many men —

Mr. Brown: Let him answer.

Mr. Garrison: No.

Mr. Brown: I think he is entitled to answer.

Mr. Garrison: I want to know the number of men if he knows.

10 The Witness: He had six men on the job when I went on the job.

Q. He had only six men?

A. That was on a Thursday, I believe it was a Thursday.

Q. Now, would it surprise you to know that when you went to work he had ten men on the job?

A. Well, they were not there if there were. I will swear to that.

20 Q. Would it surprise you to know that he had ten men on the job?

A. It would surprise me very much.

Q. Well, now, you worked seven weeks. Now, do you think you averaged a full week each week?

A. I think I did, and more regarding the case.

Q. Now, do you think you averaged eight hours a day?

A. I did and more.

Q. And that would be five days and a half?

A. Yes, sometimes six.

30 Q. That would be forty-four hours a week then you made, didn't you?

A. Yes.

Q. And seven weeks would be—seven plus four equals twenty-eight and that would be three hundred and eight hours at a dollar an hour. Then you drew about \$308, didn't you?

A. About that, pretty near that.

Q. And you finished it. Now, did your helper make as many hours?

A. Yes, he made the same hours as I did.

Q. And he got sixty-five cents?

A. Yes, sir.

Q. Now, by my figuring he got \$28.00—no, that is one week. He got \$196?

The Court: And he got how much? 10

Mr. Garrison: Well, he got \$308 and the helper got \$196, which made \$504.

Q. Is that right?

A. I suppose so, according to the figures it is.

Mr. Brown: You are assuming that Mr. Garrison has figured correctly.

The Witness: I believe so. 20

Q. Now, how much of that money did you charge to Mr. Speece?

A. None whatever.

Q. None?

A. None whatever.

Q. Let me show you a bill you handed Mr. Speece and I ask you if that was not—

A. No, sir; this bill here was for two weeks after the last men left—Mr. Steelman left the job and I continued to work— 30

Q. You answered it. That was for two weeks after Mr. Speece had quit?

A. No, not that I knew of. He may have quit but he didn't tell me when I called him up on the phone.

Q. No men there when you went there?

A. When I went there, no.

Q. But you?

A. But me.

Q. And you worked two weeks and filed a stop notice—you filed a stop notice for \$118.80?

A. Yes; it was due me of Mr. Speece—

Q. Now, you have answered it. You have done well. You charged Mr. Speece \$118 after he had  
10 quit; \$118.80, is that right?

A. Not after he quit that I know of. He may have quit but I didn't know it.

Q. You put this in a lawyer's hands?

A. No, sir; positively no.

Q. You didn't? Now, let's see if you know what you did or not. Did you serve this on him?

A. I served that on him but I went to Mr. Phillips.

Q. Who is Mr. Phillips?

A. Who was Mr. Phillips? A lawyer who was de-  
20 fending Mr. DelVecchio, and he said I can't take your case up, so, therefore—

Q. That is all. Then you did go to a lawyer, didn't you?

A. Yes.

Q. Well, who prepared this notice?

A. Mr. Phillips.

Q. Oh! And he is a lawyer?

A. He is a lawyer.

Q. You went to a lawyer, didn't you?

30 A. Yes.

Q. And that was about two weeks after Speece had quit the job?

A. Not that I know of. He may have quit but I didn't know it. I think he quit—from the beginning.

Q. You ceased the week before?

A. Before what?

Q. Before this change was made?

A. He took the foreman off the job.

Q. Did you work the week before?

A. The week before?

Q. Yes.

A. Sure I worked the week before, and I got paid for the week before.

Q. Then you came back there after he had gone and worked, didn't you?

A. No, sir; I didn't know he had quit. How did I  
10 know he had quit without a man went over on the job?

Q. Do you say that neither he nor any of his men were there?

A. The man was only on the job three times in two months.

Q. Didn't you think it was singular that neither Mr. Speece and none of his men were there?

A. But Mr. Speece told me to stick on the job until he told me to stop.

Q. What sort of scheme or arrangement did you  
20 have with Mr. DelVecchio to charge this \$108 to Mr. Speece?

A. None whatever.

Mr. Brown: I object—all right.

Q. None whatever?

A. No.

Q. Now, you say that about one-third of this work  
30 was done?

A. Yes, sir.

Q. Then you left. The time Speece left. And you did two-thirds of that work, did you, at a cost of \$504 outside of labor?

A. Yes, sir.

Q. Now, would it surprise you to know that Mr. Speece's time book and payroll show that he paid out \$1900 and some odd for labor on the house?

A. Well, if he did, I don't know where he put it.

Q. Would it surprise you to know?

A. It would surprise me very much.

Q. You say that \$3400 is a fair and reasonable price for the completion of this building? What is included in that \$3400?

10 A. I just told you.

Q. Well, tell me again.

A. All right. Finishing the weather-boarding outside.

Q. How much would it take to finish that weather-boarding? How many days would it take to put on 350 feet?

A. About a day and a half or two days.

Q. Day and a half?

A. Yes, sir.

20 Q. Well, that is \$12?

A. Yes, sir.

Q. That is twelve of the thirty-four. Now tell me the rest.

A. You ain't counting the weather-boarding in that, are you? We have 350 feet of weather-boarding and that counts also.

Q. How much would that cost?

A. That would cost about \$72.

Q. \$72. Now, what else?

30 A. Now we have the steps in the front, cement steps.

Q. What did that cost?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. Well, how can you say that \$3400 is a fair and reasonable price?

A. Because I know from other contracts.

Q. From what contracts?

A. Contracts that I had myself for putting in steps.

Q. What buildings did you ever build?

A. I built seven others last summer.

Q. Where?

A. Two in "Medford" and two in Atco and two in Hammonton and one in Egg Harbor.

Q. What else made up that amount? 10

A. Sanding the "sidewalks"—the outside.

Q. Sanding what?

A. Sanding the side.

Q. How much would that cost?

A. I don't know.

Q. You don't know?

A. I don't know.

Q. You are a contractor and builder. Why don't you know?

A. Because I didn't measure the building. 20

Q. But you are testifying that \$3400 is a reasonable price to finish it. Now, how do you know?

A. I am judging it would be.

Q. You are guessing it would be?

A. No, I am not guessing. I say it would be \$3400 as a reasonable price.

Q. You don't know about sanding the outside—that is the foundation?

A. Yes.

Q. You don't know that? Now, what else goes 30 to make up that \$3400?

A. Celotex, putting on, and the plaster.

Q. The plastering. Did you hear Mr. Speece say that they had an agreement that if celotex were put on he didn't have to put plaster on?

A. That is something I didn't know.

- Q. What would it cost to put plaster on?  
 A. I don't know.  
 Q. You don't know?  
 A. No; I am no plasterer.  
 Q. You don't know what the plastering would cost? What else do you say would go to make up that \$3400.  
 A. Trimming it out, hardware.  
 Q. How much would it cost to trim it out and for hardware?  
 10 A. I don't know. I don't know.  
 Q. You did the work?  
 A. Yes.  
 Q. How much would it cost if the man put labor in there and hardware? How much would it cost?  
 A. I don't know.  
 Q. You don't know?  
 A. No.  
 Q. The trimming. You don't know anything about what else went to make up that \$3400?  
 20 A. Painting.  
 Q. How much would be a reasonable price to finish the painting in that building that was not done as you say?  
 A. I judge about five hundred dollars.  
 Q. Five hundred dollars to paint that house?  
 A. Yes, sir.  
 Q. That would paint a pretty good house?  
 A. It is a pretty good house; a pretty good sized house.  
 30 Q. Now, you don't know, you didn't figure up this painting, did you?  
 A. Not exactly, no. I say about.  
 Q. About. What else do you say went to make up that \$3400?  
 A. Electrical work.

- Q. How much was that?  
 A. That I don't know, either. I am not an electrician.  
 Q. What else went to make it up?  
 A. I don't know what else.  
 Q. You don't know?  
 A. But I think that is sufficient to make up the thirty-four.  
 Q. And yet you would come here and swear that it would take \$3400?  
 10 A. Approximately \$3400 to finish the house; approximately, yes.  
 Q. And there isn't a single thing of those items that you know what it would be worth, is there?  
 A. I know what the carpenter work would be worth.  
 Q. Well, what would be the carpenter work, putting that trim on?  
 A. \$500.  
 Q. To put the trim on?  
 20 A. Yes, and finish the hardwood floors. We have hardwood floors in that house. We have 2600 feet of hardwood floors in that house.  
 Q. You said the painting would be \$500. This is the first I heard of \$500 for trim. Now, did you say that?  
 A. You are the first man figured out what the labor bill was.  
 Q. Was your labor bill for putting the trim on?  
 A. Yes, and hardwood floors.  
 30 Q. I will ask you again what would it cost to trim that house?  
 A. \$500.  
 Q. What would it cost to put the floors down?  
 A. That is included and all.  
 Q. And you cannot tell us what it would cost to put the trim on?

A. Including five hundred dollars, the hardwood floors, trimming the house and hanging doors and putting hardware on would be \$500 approximately with my labor bill.

Q. What else did you do for that \$500?

A. That is practically all.

Q. You told us a moment ago that you hung all that celotex. Did you or didn't you?

A. Yes, I hung the celotex.

10 Q. How much of that was to be hung when you went there?

A. He had about seven sheets. I don't know how many sheets there were in the house.

Q. How much did you do for the charge of \$118? What did you do for that \$118?

A. Celotex has to have a baseboard all the way around on the inside for to nail celotex on four sides, and that is what I done.

Q. And that is what you did for the \$118?

20 A. Yes.

Q. Did you tell Mr. Ed. Steelman yesterday that this house was now worth \$15,000?

A. No, sir.

Mr. Brown: I object. What is the difference?

The Witness: I told Ed Steelman—

30 Mr. Brown: I object to it. What is the difference whether he told him it was \$115,000 in this case?

Mr. Garrison: It is to test the veracity of this witness.

Mr. Brown: I admit that you may test a witness' veracity but not on collateral matters that have absolutely nothing to do with the case.

The Court: There isn't a thing on the record to object to.

Mr. Brown: If the Court thinks I was late in my objection I move to strike it out.

The Court: All right; it may be stricken.

Q. I think you said yesterday—

10

Mr. Garrison: I withdraw that.

Q. You are familiar with these plans?

A. Yes, sir.

Q. Was there an altering of the laundry and the kitchen and the office location?

A. Not in Mr. Speece's plans, no.

Q. I ask you if there was an altering of the laundry and kitchen and office location?

A. Yes.

20

Q. Yes. Was there a new partition put in the laundry?

A. Yes, sir; studding only.

Q. Was there closing up of the door in the hall?

A. Yes, sir.

Q. And was there cutting a door from kitchen to dining room?

A. Yes, opening for a door, not door. The door constitutes—

Q. Was there a cutting of a window in the bath- 30 room?

A. Yes, sir.

Q. That was done?

A. Yes, sir. The opening was there. The case-ment wasn't in.

Q. Now, what do you say would be a fair price for making those changes?

A. I said fifty dollars yesterday for a finished partition.

Q. How many days would it take you to do it?

A. I judge two men would do it in a day.

Q. These are all changes to be made in a single day?

A. That is the partition downstairs that I referred to yesterday at \$50.

10 Q. And do you know what was done, that alteration? Do you know what was done toward that alteration?

A. The siding was left off for that window to put in; opening that opening in. The casement wasn't put in when Mr. Speece left. Putting up the studding, closing up one door, or putting a studding down the center of it to close it up; opening another by cutting two studs out and putting a header over them. That constitutes all the work.

Q. You could do it all in three days?

20 A. Yes, easily.

Q. Did you know that there was a floor that had been taken up in one of those rooms and sub-base put in for another floor?

A. Not in my time.

Q. You didn't know about that?

A. No, sir.

Q. Well, if you had known about that, that would cost more than fifty dollars?

A. Yes, if it happened to be done, yes.

30 Q. Then your estimate is founded on something you don't know anything about, isn't it?

A. What was done while I was there my estimate is founded on.

Q. Then your fifty dollars is not accurate?

A. Fifty dollars is accurate on that; and over-accurate for whatever work was done by Mr. Speece.

Q. And you don't think Mr. Speece ought to have anything for those changes?

A. I don't know anything about what he did before.

Q. But you are here as an expert. Now, if he didn't do anything he ought not to have anything.

A. I am telling you what the price to put the things up would cost—fifty dollars, to complete the job with celotex and plaster which was not done.

Q. You put the celotex on? 10

A. The celotex wasn't on when Mr. Speece left.

Q. How long did it take to put it on?

A. About an hour or an hour and a half.

Q. About an hour or an hour and a half?

A. Somewhere about that.

Q. Then that room could be finished in an hour and a half's work with celotex?

A. Yes.

Q. What other work did you do? 20

A. I done the kitchen.

Q. How long did it take you?

A. I don't know. It might be put in this room and be put in another room.

Q. Can't you tell us as a builder about how long it would take to put celotex in that room?

A. No. Some days I felt like working faster than I would another.

Q. Well, can't you tell us about how long it would take?

A. No, sir. 30

Q. You don't know?

A. No, I won't tell you. I don't know.

Q. How can you tell how long it took for that other room and not this one?

A. The one partition and two partitions, three sheets—I am giving you a figure of an hour and a half, as I said.

Q. How long would it take to put on the other room?

A. I don't know because I didn't work, maybe, continuously on the other room.

Q. Well, would that make any difference to your judgment?

A. Probably not, but I ain't able to answer it.

Q. You just won't answer?

A. I ain't able to answer that question.

10 Q. What other room did you put celotex on?

A. Dining room.

Q. How long did it take you to do that?

A. I don't know.

Q. You don't know. How long do you think it would take?

A. Couldn't tell you.

Q. Haven't any idea?

A. Not the slightest.

Q. And you are a builder?

20 A. Yes, sir.

Q. What other room did you put celotex on?

A. Living room.

Q. How long did that take you?

A. I don't know.

Q. Won't tell us?

A. I can't tell you exactly how long.

Q. Why not?

30 A. Because I am not able. I worked in one room, maybe this minute, and maybe I was in the other room this next minute; and, therefore, I couldn't tell you.

Q. But in the room you told us about you kept the time?

A. I did not. I told you about an hour and a half to put it on one partition.

Q. Tell us about how long it would take—

A. I cannot tell you to be exact.

Q. Don't be exact.

A. No; I won't guess at it. I am in a place now I ain't supposed to guess.

Q. Now, let us talk about this window. You said there was a window made in the office, didn't you?

A. No, sir; not to my knowing. There is a window there that does not show on the plan, twin window where it shows a single; but I know nothing whatsoever about it, only it was before the frame was 10 put in it was a twin window, when the frame was put in. The opening was there when I went on the job.

Q. And you said the only extra expense that would be was twelve dollars or fourteen dollars?

A. Fourteen dollars for putting the frame in.

Q. You said it would not be any extra work?

A. No, sir; not one bit.

Q. Now, you want us to understand that it did not cost any more to put a twin window in than a single 20 window?

A. No; it is all on one frame.

Q. It does not cost any more?

Mr. Brown: That is not fair to the witness. He said it would cost \$14 more.

Q. Didn't you say it would cost \$14 to put that in?

A. Yes, sir.

Q. So I thought. You said it would not be any extra labor? 30

A. Not in putting the frame in, no.

Q. Wasn't that any extra labor?

A. No.

Q. And it would not cost any more to put a twin window in than a single?

A. No; I don't think so.

- Q. It would not cost any more to tear out?  
 A. The tearing out was done before I went in.  
 Q. But who did it?  
 A. I don't know.  
 Q. Then you don't know whether the man ought to have extra for putting that in?  
 A. I don't know anything about that window. The sketch shows a single window and there is a twin window in there now.
- 10 Q. You don't know anything about it?  
 A. No.  
 Q. I see. I thought the same thing. Now, how big was this house?  
 A. Why, I think about 37 feet square.  
 Q. 37 feet square. How many porches on it?  
 A. Two, sun porch and an open porch.  
 Q. Now, you worked on that house for some time, didn't you?  
 A. Yes.
- 20 Q. Is there any difference in the present house than what was contemplated by these drawings?  
 A. Yes, upstairs.  
 Q. Tell the jury what it is.  
 A. Upstairs.  
 Q. Tell the jury what it is.  
 A. There is a sewing room in here now.  
 Q. Yes.  
 A. Now, the downstairs flooring wasn't up—this is the kitchen now. This is the laundry and that is the office. It was only a mere matter of changing the names around.
- 30 Q. Now, I haven't asked you what was to be done. I have asked you the changes.  
 A. This stairway is over here now on this side. There is a door cut in here to go from the kitchen to the dining room. That is all the changes that were

made downstairs that I know of. Upstairs is a sewing room in here now and there is closets here. That is all the changes that I know of.

- Q. Well, that is all you know of?  
 A. Yes, sir.  
 Q. Well, you were there, weren't you?  
 A. Yes, sir.  
 Q. Now, after you had worked two weeks and sent Mr. Speece this bill, you then made an agreement or a contract with Mr. DelVecchio, didn't you? 10  
 A. No, sir.  
 Q. Didn't you?  
 A. No contract at all. I done it day's work.  
 Q. Then he was to pay you by the day?  
 A. Yes, or by the week. We don't usually get paid by the day. We don't get paid when we are driving nails. We get paid by the week.  
 Q. Well, you get paid by the week?  
 A. Yes.  
 Q. And he paid you? 20  
 A. Yes, sir.  
 Q. And it was an agreement you had with him that you were to do that?  
 A. Yes, sir.  
 Q. And you say you had charge of the job?  
 A. Not exactly, more or less, when Mr. DelVecchio was not on the job.  
 Q. But your entire expenses were only \$540?  
 A. For carpenter laboring.  
 Q. Now, if you had charge of this job did you keep account of how many days the painters to finish 30 worked?  
 A. No. Mr. DelVecchio was down twice a week and kept his own account.  
 Q. Do you know how many days it took?  
 A. No, sir.

Q. Don't know anything about it?

A. No, sir.

Q. How many days do you suppose they were working?

A. I don't know. They were working there when I had finished my time and gone.

Q. And yet you were willing to swear it cost \$500 to do that painting?

A. I think five hundred dollars to paint the side  
10 of the house as it is, yes.

Q. After it had been primed?

A. Yes, sir.

Q. I wanted to ask you about the heating plant. There is a new heating plant in that house now?

A. Yes, sir.

Q. And what had Mr. Speece done with that before he left?

A. Well, the heater was in the cellar but it was not installed. It was already there in parts, but it  
20 was not installed.

Q. You said a moment ago, as I recollect, that part of it had been done.

A. Part of it had been done, had been brought there in cases, etc., but it was not erected.

Q. Well, that is not installing, being brought there, is it?

A. No.

Q. You didn't see that he did any work at all?

A. No, the heater was there.

30 Q. How about the old heater? What became of that?

A. It sets in the same place it always was while I was there. I don't know whether it was moved before or not.

Q. What work did Mr. Speece do, if anything, to either of those heaters?

A. I don't know anything about what he did.

Q. You don't know anything?

A. Not a particle, no.

Q. In the \$3400 that you say it would take to finish this did you include this heater?

A. No.

Q. Didn't include that?

A. No.

Q. Didn't include the price of it?

A. No.

Q. Didn't include the labor on it or anything? 10

A. No; I don't know what it would cost to put that heater in there.

Q. You don't know?

A. Don't know a thing about it.

Mr. Garrison: That is all.

Re-direct examination.

By Mr. Brown: 20

Q. I call your attention to D16 and I notice that on the outer side of the plan there are little division marks with figures, in one place 24 x 16 and another place 26 x 26. What do those division marks indicate?

A. This 24 x 16 would indicate a frame on this side and a frame on that side of the same size. 24 is the width of the frame and 16 is the height of the sash; 24 x 16 sash on this. Now, this one over— 30

Q. 26 x 26 indicates what?

A. Over here?

Q. Yes.

A. Indicates 26 wide and high. That is the sash.

Q. Now, you have said that there were carpenters

and painters working on this job to complete it.  
Were there any plumbers?

A. Yes; there were plumbers also.

Q. Was there any materials furnished you to complete the job?

A. You mean the plumbing?

Q. Any materials of any kind, lumber or what-not?

A. Not one bit; no, sir.

10 Q. After you took up the job?

A. Mr. DelVecchio supplied me with all material.

Q. Was there any plastering done there?

A. Yes, sir.

Q. And you had plasterers there, did you?

A. Yes, sir.

Q. The tile work was done?

A. Yes, sir.

Q. Did you have tile workers there or did you do that?

20 A. No, sir; I had nothing to do with that. That is why I said I didn't have any knowledge of that. Some of it was done after I was nearly gone.

Mr. Brown: That is all.

(Witness excused.)

J. ANTHONY DELVECCHIO, recalled.

30 Further direct examination.

By Mr. Brown:

Q. Are you able to tell us the cost of the labor, carpenter's labor for the completion of this work that Mr. Speece left?

A. I can tell you approximately, not accurately.

Q. Approximately how much was it?

A. \$3400.

Q. The carpenter's labor?

A. The carpenter's labor around five hundred dollars.

Q. Can you tell us the cost of the material?

A. Material, about \$1030.

Q. What about the plumbing?

A. About \$300.

Q. Did you have plastering, too?

A. Yes, sir.

Q. And do you recall what that cost?

A. About \$700.

Q. And the painting?

A. About two hundred and forty dollars.

Q. Did you have any expense in tile work?

A. Tile work in the bathroom built cost me about \$525.

Q. What about hardware? Did you have to furnish any hardware?

A. About \$70 worth of hardware.

Q. And it is in that way that you made up your figure of around \$3400?

A. Yes, sir.

Cross-examination.

By Mr. Garrison:

Q. Painting cost you \$240?

A. Approximately.

Q. Labor? \$500?

A. Approximately.

Mr. Garrison: That is all.

(Witness excused.)

## DEFENDANT RESTS.

## PLAINTIFF'S REBUTTAL.

EDWARD STEELMAN, JR., recalled in rebuttal.

10 Direct examination.

By Mr. Garrison:

Q. Mr. Steelman, you were foreman on this job, were you not?

A. I was.

Q. As such did you keep a time book?

A. I did.

Q. I show you what purports to be a time book and

20 I ask you if that is in your handwriting?

A. That is.

Q. You kept this, did you?

A. I kept it.

Q. And this correctly represents the labor on the Speece-DelVecchio job, or the job in question?

A. It does, as long as I was working there.

Q. Now, this is up to two weeks before the job fell down, isn't it?

A. No, one week.

30 Q. One week?

A. One week after that time ends there.

Q. Now, will you look over that and tell us how many men were working during the first week?

A. The first week there were two men.

Q. The second week?

A. The second week there were four men.

Q. The third week?

A. The third week there were five men.

Q. And right on down the weeks in succession.

A. The fourth week there were five men; the fifth week there were six men; the sixth week there were six men; the seventh week there were nine men; the eighth week there were nine men.

Q. Go on.

A. The ninth week there were three men; the tenth week there were three men; the eleventh week there were three men; and the last week I was there there were three men. 10

Q. Now, up to the time you left what was the amount of the payroll?

A. \$1540.80, for them men's labor.

Q. When you left how much of the celotex was on?

A. All of the upstairs.

Mr. Brown: I object.

The Court: I sustain the objection. That was all covered in this man's direct examination. We have to stop this case somewhere. We cannot go ahead and recall all our witnesses and go over the same thing. 20

Mr. Garrison: If you are satisfied he testified to it, I am.

Q. Did you testify about the closets being in yesterday, or didn't you? 30

A. Well, I believe I did.

Mr. Garrison: That is all.

Cross-examination.

By Mr. Brown:

Q. Did you testify yesterday that the labor cost was \$1900? Did you testify yesterday that the labor cost was \$1900?

A. I did not, no.

Q. What did you say about \$1900?

10 A. That was brought up by Mr. Speece, the labor yesterday.

Q. Didn't you testify to that?

A. Not to the labor, no.

Q. Let me see that book.

(Witness hands the book to counsel.)

Mr. Garrison: I offer that in evidence.

20 Mr. Brown: Well, wait until I look at it, please, will you?

Q. Now, Mr. Steelman, when you said that there were nine men on that job, in one week, do you mean there were nine men worked the full five days and a half?

A. That is including myself, and part of that time I was sent up to Delanco.

Q. Now, do you mean that there were nine men working on that job the full week?

30 A. Nine men, yes.

Q. And when you said there were six men you meant there were six men working a full week?

A. Yes.

Q. Now, I point to the page in this book headed "Time, week ending Thursday, December 10th,

1925," and ask you whether or not there were nine men working a full week, each man making five days and a half?

A. Well, on account—

Q. Now, were there? Yes or no?

A. Not the full week.

Q. Now, we will take the first man on that list—Ed Steelman. How many days did you make, full days?

A. Made four full days.

10

Q. Out of the five and a half?

A. And one hour.

Q. How many did your father make?

A. He made two days and one hour.

Q. How many did Domenico make?

A. Four days and one hour.

Q. How many did DelVecchio make?

A. Four days and one hour.

Q. How many did Betz make?

A. He came in late, two days or three days; seven 20 hours on two days and seven and a half on the other.

Q. DelVecchio made how many days?

A. Six days, two and a half hours.

Q. How many did Andrew DelVecchio make?

A. He made two days.

Q. How many did Stark make?

A. Two days.

Q. Then when you said there were nine men working on that job that week you didn't mean nine men made the full week?

30

A. Not the full week; what we could make.

Q. Now, will you look at that book and tell me any week in which the list of men who appear there as the laborer worked the full week? The whole list. Pick out one single week.

A. There isn't on the nine men; but there is the others.

Q. All right, any week. I don't care when it is. From the beginning of that job until you left it, where you had—whether you had two men on the job, or whether you had six or nine.

A. The week ending up December 24th.

Q. How many men on the job?

A. Three of us there worked the full week.

Q. December twenty-fourth. Now, is there another week?

10 A. Not that everybody worked a full week.

Q. The first week that you were there you had two men on the job?

A. Two men.

Q. You made a full week?

A. A full week.

Q. How much time did your father make?

A. Two days and six hours.

Q. On the second week you had four men on the job. How many days did you make?

20 A. The second week? I made four full days and five hours overtime.

Q. Your father made four full days?

A. Four full days.

Q. And Reynolds made four full days and Betz two days?

A. Reynolds made four full days and Betz two days.

Q. On the next week you made a full week; and your father made four days?

30 A. Four days and four hours.

Q. And Reynolds made three full days, one seven and a half and one four?

A. One seven and a half and one four.

Q. And Betz made four, and so it runs throughout the week?

A. Yes.

Q. In whose handwriting is that slip of paper?

A. Which slip of paper—

Q. Is it your handwriting?

A. Yes.

Q. That is your handwriting. Now, what did you make up that slip from?

Mr. Garrison: Let me see that, please.

Mr. Brown: Now, wait a minute. I am not ready 10 for you to see it.

Q. What did you make up those figures from?

A. From a rough sketch that I had on the time; just on a sheet of paper.

Q. You had your time book at the time you made up this?

A. No; I didn't have my time book at the time I made up this.

Q. What did you make up this memorandum for? 20

A. To get an idea.

Q. Do you know how it got into the hands of Mr. DeVecchio?

A. No.

Q. On that you show a total labor of \$1329.20, don't you?

A. That I don't know what it totaled up.

Q. Well, tell me.

A. (Examining paper.) That is what his total was. 30

Q. That is correct?

A. The time book is correct.

Q. This slip is incorrect?

A. Yes.

Mr. Garrison: We will offer both of them in evidence.

The Witness: The book is the time that the men worked and what they got an hour and everything right there.

A. Take that slip in your hand. The first week this book says you made \$55.80. What does that say?

10 A. \$55.80.

Q. Second, \$96.80?

A. \$96.80.

Q. Third week, \$114.80?

A. \$114.80.

Q. Next week, \$145.40. What does your slip say?

A. \$145.40.

Q. Next week, \$111.70. What does the slip say?

A. \$111.70.

Q. Next, \$114.80?

20 A. \$114.80.

Q. Next week this book says \$146.20.

A. \$146.20.

Q. And the next week says \$255. What does the slip say?

A. Same thing.

Q. And the next says \$114.65.

A. This is \$118.80.

Q. And the next week it says \$87.60.

A. \$87.60.

30 Q. Next week, \$90.90.

A. This has \$86.40.

Mr. Garrison: I offer it in evidence.

(The time book referred to is received in evidence and marked as an exhibit for the plaintiff P6.)

(The slip referred to is received in evidence and marked as an exhibit for the plaintiff P7.)

(Witness excused.)

Mr. Garrison: I think Mr. Steelman testified the celotex was all on the bathroom and part of the kitchen. Is that so? 10

Mr. Brown: Yes.

Mr. Garrison: Then we rest.

PLAINTIFF RESTS.

DEFENDANT'S MOTION TO DISCHARGE THE 20  
LIEN.

Mr. Brown: I move for a discharge of this lien. The statute requires among other things that the lien claim shall state the name of the owner and the estate to be charged with the lien. The lien claim alleges that the owner is J. Anthony DelVecchio and the estate is an estate in fee. The proof of the plaintiff in this case is that he is not the sole owner. He merely is an owner of an estate by entirety. In that respect the lien claim is wrong and certainly this case cannot result in charging this land in the hand of DelVecchio as though there were an estate in fee. 30

The act also provides that there must also be attached to the lien claim a bill of particulars and that that bill of particulars must state either the amount,

the kind of labor and materials and time when it was furnished, or if by contract that certain work therein stated was done by contract at the price mentioned.

Now, I maintain that the lien claim does not so state. The lien says that there was a contract for \$500 and that all of the other items are extra items and the only conclusion to be drawn from that lien claim is that they were extra items under the original contract and in part a contract price agreed on between the parties, and there are no dates or times when the materials were furnished or the labor done. For that reason I say that the lien claim is bad. I maintain that it does not correspond with the act; that it contains wilful misstatements. At the very outset of this case they came in here and eliminated three items from this case after the plaintiff had taken an oath that it correctly stated the charges which were to be made against the defendant in the affidavit and it also shows in this case that materials and the labor were not furnished to the places alleged in that lien claim, and there cannot be a lien under those circumstances.

Now, after that I have a motion for a direction that I desire to make. Shall I make the motion now?

The Court: Yes.

Mr. Brown: I claim we are entitled to a direction of verdict for the reason that it appears in this case both by the plaintiff's case and defendant's case that there has been no substantial performance and that no recovery can be had for the work and materials that have not been furnished on this job. Under those circumstances I think they can only recover, the cases hold, on a quantum meruit, even assuming that they were justified in leaving the work, and that, therefore, they cannot succeed in this suit.

The Court: There is no proof of the lien being filed four months within the time of the work being done. I think it becomes the duty of the Court to direct the jury that there can be no special lien verdict rendered, but a general verdict against the defendant may be rendered.

Mr. Garrison: I do not care much about that special lien, anyway. A judgment, I take it, will answer all our points in this case without a special lien. 10

The Court: All right. I will deny your motion, Mr. Brown, for a direction. You may have an exception, with the understanding that the jury will be directed that no special verdict may be rendered.

Mr. Brown: Allow me an exception.

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(Mr. Garrison opened the plaintiff's case to the jury.) 20

(Mr. Brown summed up the defendant's case to the jury.)

(Mr. Garrison summed up the plaintiff's case to the jury.)

## COURT'S CHARGE TO THE JURY.

WILLIAM H. SMATHERS, J.:

In this case there can be no special lien verdict entered against this defendant, against this property.

10 If any verdict at all is rendered against the defendant, it will be the usual and general verdict against the defendant and no special verdict rendered by you against the property involved in this litigation.

The plaintiff in this case seeks to recover from the defendant, alleging that there is a balance due the plaintiff from the defendant on contract, and alleging also that the defendant is indebted to the plaintiff in the sum of some \$4900, representing extra work done by the plaintiff at the request of the defendant.

20 The first question that you members of the jury should pass upon is the question of whether or not this plaintiff abandoned this contract or whether he ceased work at the request of the defendant.

The Court charges you as a matter of law that if the plaintiff abandoned his contract and you find that that was no substantial performance of his contract, then there can be no recovery by him for any balance due him under the contract in this case.

30 On the other hand, if the plaintiff ceased work at the request of the defendant, then, of course, the plaintiff would be entitled to recover any balance due him on the contract for the work performed by him, after making a reasonable allowance to the defendant for whatever cost he may have laid out in the completion of the contract for the plaintiff.

So your first question dealing with the contract is

whether or not there was an abandonment by the plaintiff. If there was an abandonment by the plaintiff, and the plaintiff quit work without any reason due to the defendant or without the defendant having requested him to quit work, and if there was no substantial compliance with the contract, then the plaintiff, not having substantially performed his contract could not recover any balance due him under the contract.

The next question is whether or not there was an independent agreement made between the defendant and the plaintiff whereby the defendant requested certain extra work to be performed by the plaintiff. If the plaintiff has satisfied you by the greater weight of the evidence, by a fair preponderance of the evidence, that there was extra work done; that the extra work was done by him, not contemplated by the plans and specifications, at the request of the defendant, then as a matter of law the defendant is required to pay to the plaintiff for that extra work all of its reasonable value. It becomes a fact question for you, ladies and gentlemen, to determine whether or not extra work was ordered by the defendant. If it was ordered, was it performed by the plaintiff? And if it was performed, what is a reasonable compensation to the plaintiff for the performance of the extra work? If it was not performed, then, of course, the plaintiff cannot recover. If it was partially performed then as a matter of law the plaintiff is entitled to recover the fair compensation or fair value of whatever partial performance he did on these extra jobs that he contends the defendant ordered him to perform.

(You may retire.)

(The jury retired.)

Mr. Brown: Do I understand that you refuse to charge the defendant's requests?

The Court: Yes.

Mr. Brown: I ask an exception to the Court's refusal to charge the defendant's requests to charge.

I also take an exception to so much of the Court's charge as in substance says that if the plaintiff ceased work at the request of the defendant he, the plaintiff, is entitled to recover the balance due under the contract less a reasonable allowance for completion.

I desire also to take an exception to so much of the Court's charge as said in effect that the jury was to determine whether or not the extra work was done under an independent agreement aside from the original agreement.

I take exception to so much of the Court's charge as said in substance that the defendant was required to pay to the plaintiff the reasonable value of the extra work that he did if it was ordered by the defendant.

I also take exception to that part of the Court's charge which said in effect that if the work was partially performed the plaintiff was entitled to recover.

30 DEFENDANT'S REQUESTS TO CHARGE.

Defendant requests the Court to charge the jury in the above entitled cause as follows:

1. Where a contract is entire, the complete performance is a condition precedent to the payment of the price, and no recovery can be had for a partial

performance, unless the parties, by mutual consent, have agreed to sever the contract, or the defendant has himself repudiated it, or the plaintiff is justified by some fault of the defendant in abandoning it.

2. The promise of DelVecchio to make the installment payments is entirely independent of the promise of the contractor, Speece, to perform and complete the work.

3. The failure of DelVecchio to make payment as provided in the contract was not in itself an abandonment of the contract by him.

4. The covenant to complete the work and the covenant to make monthly payments are independent of each other.

5. If Speece has not substantially complied with the terms of the contract he cannot recover.

6. The completion of the building by DelVecchio after Speece had left the work, is neither presumptive nor conclusive evidence of such acceptance of Speece's work as would entitle Speece to recover in this suit.

7. Before Speece can recover in this suit he must establish as a fact that the work and materials for which he claims payment were actually furnished.

8. The work and materials cannot be considered as furnished until the whole contract is completed.

WM. ELMER BROWN, JR.,  
*Attorney for Defendant.*

## OPINION.

(Filed Nov. 15, 1927.)

NEW JERSEY SUPREME COURT.  
#41 May Term, 1927.

10

WILBUR D. SPEECE,  
Plaintiff-Respondent, }  
v. }  
J. ANTHONY DELVECCHIO,  
Defendant-Appellant. }

20

Submitted May Term, 1927. Decided November  
, 1927.

On appeal from Atlantic County Circuit Court.

30

For the appellant, WILLIAM ELMER BROWN, JR.  
For the respondent, CARLTON GODFREY, WILLIAM  
I. GARRISON.

Before GUMMERE, Chief Justice, and Justices  
BLACK and LLOYD.

*Per Curiam:*

This is an appeal by the defendant from a judgment rendered in the Atlantic County Circuit Court in favor of the plaintiff, Wilbur D. Speece. Speece had contracted with the defendant, DelVecchio, to make certain alterations in a building owned by the latter at Hammonton. These alterations were not completed by reason, as claimed by Speece, of the fact that the appellant refused to permit him to complete. A lien was filed and the suit thereon prosecuted for moneys claimed to be due under the contract and for certain extra work and materials which Speece claimed to have furnished outside of the contract at the request of the appellant. 10

The principal grounds of appeal are that the Court refused to control the case by the granting of a non-suit or the direction of a verdict in favor of the defendant below, and it is urged in support of the motions made to that end in the Court below that the evidence for extras did not accord with the averments of the complaint and that the plaintiff failed to substantially perform the contract. The first contention entirely overlooks the fact that the complaint alleged moneys to be due for extras as well as under the contract, and as to the second the proofs that the defendant had prevented full compliance with the original contract could not be ignored. 20

Error in the admission and rejection of evidence is alleged, as well as in portions of the charge and denial by the Court of certain requests presented for charge. 30

We have examined these grounds of appeal and do not find in the rulings on evidence anything justifying a reversal of the judgment. The requests

presented in so far as they were proper were, we think, adequately covered in the Court's charge. The judgment is affirmed.

REMITTITUR.

NEW JERSEY SUPREME COURT.

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WILBUR D. SPEECE, <i>Plaintiff-Respondent,</i> v. J. ANTHONY DELVECCHIO, <i>Defendant-Appellant.</i>	}	Action at Law. On Appeal from At- lantic County Cir- cuit Court. Remittitur.
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The judgment of the Atlantic County Circuit Court in the above entitled cause, having been appealed to this Court and this Court having considered the case and the respective arguments and briefs of counsel, and being of opinion that the judgment in favor of the plaintiff, Wilbur D. Speece, in the court below should be affirmed.

It is, thereupon, on this 21st day of November, 1927, on motion of Carlton Godfrey and William I. Garrison, attorneys for the said Wilbur D. Speece, ordered that the said judgment be and the same is hereby affirmed with costs and the record be remitted to the Court below to be proceeded with in accordance with this judgment and the practice of said Court.

Rule actually entered November 21st, 1927.

On motion of

CARLTON GODFREY,  
WM. I. GARRISON,  
*Attorneys for Plaintiff-Respondent.*

A true copy.

EDWARD J. KELLEHER,  
*Clerk.*

10

NOTICE OF APPEAL AND GROUNDS.

NEW JERSEY SUPREME COURT.

WILBUR D. SPEECE, <i>Plaintiff-Respondent,</i> v. J. ANTHONY DELVECCHIO, <i>Defendant-Appellant.</i>	}	Action at Law. Notice of Appeal and Grounds.	20
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To Messrs. Carlton Godfrey and William I. Garrison, Attorneys for Plaintiff-Respondent:

Take notice that the appellant, J. Anthony DelVecchio, appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause on the following grounds:

1. That the Supreme Court affirmed the judgment of the Atlantic County Circuit Court although there was error in so doing.

WM. ELMER BROWN, JR.,  
*Attorney for Appellant.*

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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WILBUR D. SPEECE,  
*Plaintiff-Respondent,*

v.

J. ANTHONY DELVECCHIO,  
*Defendant-Appellant.*

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ACTION AT LAW.

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BRIEF OF APPELLANT.

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FACTS.

This case was tried in the Atlantic County Circuit and resulted in a general (not special) verdict and judgment in favor of respondent Speece in the sum of \$3,976.33 damages and \$50.70 costs, making a total of \$4,027.03 (State of Case, page 29.)

Suit was instituted on mechanic's lien. The complaint was based upon a written contract dated October 26, 1925, a copy of which was introduced in evidence and is attached to plaintiff's complaint (State of the Case, page 19). By said contract respondent Speece contracted to make certain alterations and additions to house located in Ham-

monton, New Jersey, for the price of \$4,200.00, which appellant DelVecchio agreed to pay in instalments of \$350.00 at the time of signing said contract and \$500.00 each week until the work was completed. Plaintiff demanded judgment for \$5357.97, and attached to his complaint a bill of particulars (State of the Case, page 16), setting forth the manner in which said sum is computed. It will be noted by reference thereto that plaintiff claims the right to compensation in the sum of \$4908.80 (a sum greater than the original contract price), for certain extras which he claims to have been done by him. The total charges as claimed by plaintiff amounts to \$9108.80. DelVecchio paid Speece \$2996.20, and an additional credit of \$800.00 was arbitrarily allowed by Speece to enable DelVecchio to complete and finish the work anticipated by said contract. Speece in his complaint admitted that the work for which he was seeking compensation had not been completed by him, but alleged that he was compelled to discontinue the work "because of a circumstance created by the owner and outside of the control of the contractor" (State of the Case, page 18, line 33). Further proof of the fact that the work was not completed by Speece may be found throughout the entire testimony adduced at the trial below, and at this point there seemed to be no real dispute except as to the extent to which Speece had performed the work.

DelVecchio in his answer filed in the case denied Speece's entire claim for extras, and, among other things, alleged that he was not entitled to recover any part of his claim because of his failure to completely perform his part of said contract. The property upon which the work had been done and upon which the lien was claimed was owned by J.

Anthony DelVecchio, the appellant, and his wife (State of the Case, page 39, lines 13 to 23).

After the trial below the Court allowed a rule to show cause why a new trial should not be granted and therein reserved the right of appeal on the exception taken at the trial (State of the Case, page 30). After hearing and argument the Court refused to disturb the verdict and ordered said rule to be dismissed (State of the Case, page 32.) An appeal was, therefore, taken to the Supreme Court upon eighteen assignments of error set forth as part of the notice of appeal (State of the Case, page 33). Said appeal resulted in an affirmance by Per Curiam opinion. (State of Case, page. ) The same points argued in the Supreme Court as ground for reversal are likewise argued here.

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POINTS.

I.

THE TRIAL COURT ERRED IN PERMITTING WITNESS, WILBUR D. SPEECE, TO ANSWER THE FOLLOWING QUESTION, "WAS THAT CONTEMPLATED IN YOUR FIRST SKETCH?"

This question will be found in the last line of page 43 of State of the Case, and it occurred in that part of the testimony of Speece wherein he was called upon to testify as to certain extra items which he was claiming compensation for. There was question in the case whether any of said items were extras; it being contended by DelVecchio that

many of the things which Speece claimed he had done were not done, and that certain other of the things which Speece claimed as extras were not extras at all. Speece had previously testified about certain drawings or sketches which had been made for this job. On page 41 of the testimony reference is made by Speece to two sets of plans. At line 25 of page 43 of the State of the Case, reference is made to an item of extras, and after Speece had explained the character of the work which he claimed to be extra, counsel for plaintiff asked him the question to which exception was taken. It is submitted that by the allowance of this question over objection on the part of counsel for the defendant was error in that the answer of the witness was the conclusion drawn by him. It was the jury's province to determine what was covered or contemplated by the sketches and contract, and Speece should not have been permitted to usurp that jury duty. The error of the Court was harmful and prejudicial because there was a great deal of testimony taken on the part of both parties to the suit having reference to an explanation or reading of the contract and plans. There were two sets of plans before the jury and offered in evidence. Previous to the asking of the objectionable question, Speece's attention had been referred to a pencil sketch on the back of a calendar (State of the Case, page 40, line 29 to page 41, line 2), and also to certain blue-print plans which DelVecchio claimed were required by reason of changes requested by DelVecchio in the first plan (State of the Case, page 41, line 19, to page 42, line 19). The question asked and to which objection is here made was put to the witness for the sole purpose of having Speece say that the work about which he was

then testifying and for which he claimed extra pay was not a part of the first plan upon which it had already been said the contract had been based. Speece claimed that the blue-print or second drawing had been made after the original contract had been entered into (State of the Case, page 41, lines 19 to 28), and DelVecchio claimed that the pencil drawing on the four copies of the calendar and the blue-print had both been made prior to the execution of the contract; that the blue-print drawing was a more finished representation of what the pencil drawing was intended to represent, and that the blue-print drawing did not change the general layout of the anticipated alteration (State of the Case, page 136, line 30, to page 138, line 12).

It can be seen by a reading of the testimony of the two parties to the suit having reference to these drawings what was contemplated in each became an important issue, and to have permitted plaintiff to give his conclusion of what those drawings contemplated or included was likely to and did do great injury and harm to the defendant's interest in the case. Said drawings were in the same classification as all other documents introduced as evidence, namely, unless they can be shown to be ambiguous they should be taken as "speaking for themselves" and no oral explanation thereof can be permitted.

## II.

THE TRIAL COURT ERRED IN REFUSING TO PERMIT WITNESS, WILBUR R. SPEECE, TO ANSWER THE FOLLOWING QUESTION ON CROSS-EXAMINATION, "DO YOU KNOW WHAT YOUR LABOR COST WAS ON THIS OPERATION FROM THE TIME YOU BEGAN UNTIL THE TIME YOU QUIT?"

The asking of this question appears on page 132 of the State of the Case. This question became material and relevant on cross-examination for two reasons. First, because Speece had previously testified that he was unable to go on with the work in accordance with the contract because of the fact that the defendant did not pay him as agreed therein (State of the Case, page 53, line 14 to page 54, line 34). Also this question became material and important because of the fact that Speece was claiming the right to recover for work not completed, and the jury was to determine in what amount he was entitled to recover, if at all, for the work that had been done. This question would elicit some testimony concerning the cost of the work to Speece, and to refuse to permit the question to be answered, therefore worked harm and injury to the interests of DelVecchio, the appellant here.

## III.

THE COURT ERRED IN REFUSING TO GRANT THE MOTION FOR NON-SUIT ON THE GROUND THAT THE EVIDENCE DID NOT SUPPORT THE ALLEGATIONS OF PLAINTIFF'S COMPLAINT RESPECTING HIS CLAIM FOR EXTRAS, OR IN OTHER WORDS, THE EVIDENCE AND THE ALLEGATIONS OF THE COMPLAINT WERE AT VARIANCE IN THAT RESPECT.

Paragraphs 2 and 3 of the complaint (State of the Case, page 14) allege that said DelVecchio was indebted to Speece for materials and labor furnished as designated in the bill of particulars attached to said complaint and made a part thereof. In said bill of particulars (State of the Case, page 16), the full amount of the original contract price, to wit, \$4200.00, is claimed. Then follows certain other items under the general heading, "For the Erection and Construction of the following Extras not Included in the above Contract but ordered personally by J. Anthony DelVecchio of Wilbur D. Speece." It will be noted that there is no allegation in said complaint that DelVecchio ever agreed to pay a stipulated price for any of said extra work. From a reading of said complaint it can only be inferred that the charges enumerated opposite each item represent the reasonable value thereof. There was no testimony adduced, however, by the plaintiff tending to support those charges for extras as reasonable and fair charges, but, on the contrary, the only evidence which the plaintiff produced to support the extra charges

alleged in his complaint was to the effect that each item was the subject of a separate and independent contract wherein the price of the work to be done was agreed upon (State of the Case, from page 42, line 20, to the bottom of page 51). It was because of the fact that the plaintiff made out an entirely different case, by the testimony, from that which he had alleged in the complaint filed by him that this variance was urged as one of the grounds for non-suit, and it is submitted that upon this ground, if upon no other, the motion for non-suit should have been granted.

## IV.

THE COURT ERRED IN REFUSING TO GRANT THE MOTION FOR NON-SUIT UPON THE GROUND THAT THE BILL OF PARTICULARS ATTACHED TO PLAINTIFF'S COMPLAINT DID NOT SATISFY THE REQUIREMENTS OF THE STATUTE.

The ground of appeal is abandoned and therefore not argued.

## V.

THE TRIAL COURT ERRED IN REFUSING TO GRANT MOTION FOR NON-SUIT UPON THE GROUND THAT THE PLAINTIFF HAD NOT SHOWN A SUBSTANTIAL PERFORMANCE BY HIM OF THE CONTRACT UPON WHICH HIS ACTION WAS BASED.

It has for a long time been the law in this State that as a pre-requisite to the right to recover the contract price of work done or material furnished the person claiming such compensation must sub-

stantially comply with the performance of the contract on his part. In the case of *Brown v. Fitch*, 33 N. J. L. 418, Mr. Justice Depue, in speaking for the Court of Errors and Appeals, said:

"Where a contract is entire, the complete performance is a condition precedent to the payment of the price, and no recovery can be had for a partial performance, unless the parties, by mutual consent, have agreed to sever the contract, or the defendant has himself repudiated it, or the plaintiff is justified by some fault of the defendant in abandoning it." (Citing Cases.)

Speece, the respondent herein, admitted that full and complete performance had not been made by him (State of the Case, page 53, lines 14 to 16). He gave as his reason for not completing his contract the fact that DelVecchio, the appellant herein, did not pay to him the contract price in the manner provided by the contract. When asked, "Why didn't you complete it?" he, Speece, replied, "The best reason in the world. I didn't get paid. He broke his contract" (State of the Case, page 53, lines 17 to 19). Then following, on page 53, Speece testified as to certain conversation he had with DelVecchio with reference to payment, and finally, on page 54 at line 17, Speece says DelVecchio told him, "Well, you might as well quit until I get you some money, because I can't get it yet and if I get it I will bring it over," and then the testimony continues as follows:

"Q. Well, did you quit?

A. I did.

Q. Now, why did you quit?

A. Because I didn't get the money, He told

me he couldn't get it and I should stop, and I stopped."

A reading of Speece's testimony at this point as it appears on pages 53, 54 and 55 of the State of the Case is convincing that he was told to leave the work only for a temporary time and until DelVecchio could get himself properly financed to proceed, and the only conclusion that can be drawn from Speece's testimony is that he agreed to quit until that time.

The plaintiff, Speece, in an effort to strengthen his testimony at this point, produced his wife as a witness, and she testified that she had a telephone conversation with DelVecchio with reference to the payment of money, and he, DelVecchio, told her, "I think best for Mr. Speece to stop. I am trying to get the money and until I get the money he better stop" (State of the Case, page 128, line 14).

It was shown that Speece left the work some time the latter part of January and that he consulted Mr. Garrison, his lawyer, about the matter some time near the beginning of February (State of the Case page 95, lines 20 to 30).

The only excuse that Speece gives, therefore, for his failure to carry on and complete the work which he had agreed to do was he had not been paid and that DelVecchio had requested him to stop work until the financing of the work could be arranged.

It is submitted that this did not justify Speece in totally abandoning the work, nor was he justified in bringing this suit to recover payment, in view of the fact that he had quit the work upon definite understanding with DelVecchio. See *Blackburn v. Riley*, 47 N. J. L., 290; *Potts v. Point Pleasant Land Co.*, 49 N. J. L., 411; *Otis v. Adams*, 56 N. J.

L., 38; *Gerli v. Poidebard Silk Mfg. Co.*, 57 N. J. L., 432; *Luce v. The New Orange Industrial Association*, 68 N. J. L., 31; *Empire Rubber Mfg. Co. v. Morris*, 77 N. J. L., 498; *Vine v. Kennedy Company*, 2 N. J. Misc. Reports, 774.

In further support of the contention that Speece had not substantially performed his part of the contract reference need only be made to the following:

1. No flooring of any kind had been put in (State of the Case, page 66, line 18).
2. Old Lumber was used instead of new as contemplated in contract (State of the Case, page 67, line ).
3. No composition flooring was put on porches (State of the Case, page 67, line 12).
4. No trim or interior finish work had been installed (State of the Case, page 67, line 24).
5. All doors had not been furnished and hung (State of the Case, page 67, line 30).
6. All the hardware necessary to complete the work had not been provided (State of the Case, page 68, lines 26 to 36).
7. The heating plant was not changed as provided in the contract (State of the Case, page 69, line 12).
8. The painting work had not been done; merely part of the priming had been applied (State of the Case, page 70, lines 17 to 23).
9. The stationary tubs and concrete floor in the laundry were not installed (State of the Case, page 70, line 24).
10. No bathroom fixtures were supplied (State of the Case, page 71, line 1).
11. The cement steps in front of the house and porches were not done (State of the Case, page 71, line 30).

12. The plastering had not been done (State of the Case, page 72, lines 16 to 34).
13. No tile was put in the bathroom (State of the Case, page 87, line 18).
14. No celotex or plaster had been put on the partition in the laundry (State of the Case, page 110, line 31 to page 111, line 7).
15. The shower bath and plumbing had not been put in bathroom (State of the Case, page 113, lines 4 to 8).
16. All of the colonial siding had not been put on (State of the Case, page 113, line 25).
17. There was no trim on the windows (State of the Case, page 116, line 5).
18. The back steps had not been completed (State of the Case, page 116, line 33).
19. The side walls had not been cemented and sanded (State of the Case, page 117, line 21).

In view of plaintiff's admission of only partial performance, it is submitted that he did not show any justification for abandonment, and therefore a motion for non-suit should have prevailed.

## VI.

### THE TRIAL COURT ERRED IN REFUSING TO DIRECT A VERDICT IN FAVOR OF THE DEFENDANT.

The motion for direction was based upon the ground that there had not been a substantial performance of the contract on the part of the plaintiff and that no recovery could be had for work and materials that had not been furnished on the job.

Considerable has been heretofore said in this brief with reference to the failure of plaintiff to perform his contract, and there was considerable additional testimony given by defendant at this point. In addition to the particulars in which the plaintiff admitted the work was incomplete, defendant proved that pine flooring had been used in one of the porches instead of composition flooring (State of the Case, page 172, line 34 to page 173, line 8).

Witness Stark said that the building had only progressed one-third toward completion at the time Speece left the job (State of the Case, page 185, lines 22 to 30). When asked what remained to be done in order to complete the job Stark said:

“Why, finish the weather-boarding outside, put the windows in the sun parlor, put the steps on the outer side, sand the walls on the outside, celotex the inside, plaster the inside and trim it out—I refer to that by putting the trim on the windows, hang the doors, put in the hardwood floors, put in the bathroom fixtures, all plumbing fixtures. It was all to be done when Mr. Speece left the job” (State of the Case, page 185, line 30).

And again Stark said the painting had to be finished (State of the Case, page 186, lines 6 to 10); the celotex wasn't on in the kitchen (State of the Case, page 186, line 20); nor in the living-room (State of the Case, page 186, line 28); nor in the hall downstairs (State of the Case, page 186, line 33).

With reference to Speece's abandonment of this work, defendant, DeVecchio, said that he had never told Speece he did not have the money to go on with

the work and that he had better lay off of it until he could get the money (State of the Case, page 143, line 8). DelVecchio admitted that he did not pay the contract price as the contract provided, but said that his reason for this was that Speece was not properly performing his contract (State of the Case, page 141, line 35, to bottom of page 142). The further proof is that DelVecchio did have the money to complete the job, and in fact did finish it after some time had elapsed following Speece's abandonment (State of the Case, page 143, lines 13 to 22). The cost of completion to defendant was approximately \$3400.00, and as against this the plaintiff made an arbitrary allowance of \$800.00.

With this abundance of proof of the failure of the plaintiff to substantially perform his contract and no proof to justify his abandonment of the work, it is submitted that the motion for direction of a verdict should have prevailed.

Another ground advanced for direction of a verdict in favor of the defendant was that the plaintiff could not recover in this action for amount due under the contract, but if entitled to recover at all, he could recover only on a *quantum meruit*. In *Bozarth v. Dudley*, 44 N. J. L., 304, Mr. Justice Magie, speaking for this Court said:

"The rule most agreeable to the principles governing contracts is, it seems to me, this: When a contract for erecting a building has not been so performed that a recovery can be had thereon, a recovery in assumpsit upon the common counts for work and materials furnished in the erection, will only be permitted when the owner has actually accepted the building erected."

## VII.

**THE TRIAL COURT ERRED IN CHARGING THE JURY AS FOLLOWS:** "On the other hand, if the plaintiff ceased work at the request of the defendant, then, of course, the plaintiff would be entitled to recover any balance due him on the contract for the work performed by him, after making a reasonable allowance to the defendant for whatever cost he may have laid out in the completion of the contract for the plaintiff."

This portion of the Court's charge immediately followed a charge to the effect that if the plaintiff had abandoned the contract he could not recover. Exception is taken to the charge upon the ground that even if plaintiff did leave the work at request of defendant he could not recover in an action to recover the balance of the contract price, but he could only recover on the common counts for the reasonable value of the work done and the materials furnished by him.

## VIII.

**THE TRIAL COURT ERRED IN CHARGING THE JURY AS FOLLOWS:** "The next question is whether or not there was an independent agreement made between the defendant and the plaintiff whereby the defendant requested certain extra work to be performed by the plaintiff."

This portion of the Court's charge is erroneous because the complaint upon which the suit was in-

stituted does not allege that the extra work was done upon independent contract or agreement wherein the price was agreed upon. The Court permitted the trial to proceed, however, upon that theory as has hereinbefore been pointed out, and then finally submitted it to the jury on that question. The right of plaintiff to recover for extra work done under the complaint filed should have been submitted to the jury, if at all, only upon the question of reasonable value.

## IX.

**THE TRIAL COURT ERRED IN CHARGING THE JURY AS FOLLOWS:** "If the plaintiff has satisfied you by the greater weight of the evidence, by a fair preponderance of the evidence, that there was extra work done; that the extra work was done by him, not contemplated by the plans and specifications, at the request of the defendant, then as a matter of law the defendant is required to pay to the plaintiff for that extra work all of its reasonable value. It becomes a fact question for you ladies and gentlemen, to determine whether or not extra work was ordered by the defendant. If it was ordered, was it performed by the plaintiff? And if it was performed, what is a reasonable compensation to the plaintiff for the performance of the extra work?"

In this portion of the Court's charge the case was submitted to the jury to determine the reasonable value of the extra work done. Under the pleadings in this case that was the only theory upon which the case could be submitted. There was, however, no proof before the jury from which they could

determine reasonable value. The only proof produced by the plaintiff having bearing upon the compensation for the extra work was the testimony of Speece himself, wherein he testified that each individual extra item was the subject of an independent contract between him and DelVecchio with the contract price agreed upon. With no evidence to warrant it, it was therefore error for the Court to leave the question of reasonable value to the jury.

## X.

**THE TRIAL COURT ERRED IN CHARGING THE JURY AS FOLLOWS:** "If it was partially performed then as a matter of law the plaintiff is entitled to recover the fair compensation or fair value of whatever partial performance he did on these extra jobs that he contends the defendant ordered him to perform."

This was the last statement in the Court's charge, and it is submitted that same is a mis-statement of law. For the reasons hereinbefore stated the Court was not justified in submitting the case to the jury for them to determine what was the "fair compensation or fair value" of the work done, but in addition to this the statement is erroneous for the reason that it holds the plaintiff entitled to recover for partial performance regardless of the reason for plaintiff's failure to fully and completely perform. This was an entire contract according to the proof, and the right of plaintiff to recover depended upon other things than the mere proof of partial performance. The law was clearly stated

for the Court of Errors and Appeals by Mr. Justice Depue in *Brown v. Fitch, supra*. At no place in the Court's charge did he state that the right of plaintiff to recover for partial performance depended upon proof that the parties by mutual consent had agreed to sever the contract or the defendant had himself repudiated it or that the plaintiff was justified by some fault of the defendant for abandoning it, and it is submitted that the failure of the Court to qualify the statement of the law in this manner was harmful error.

#### XI.

**THE TRIAL COURT ERRED IN REFUSING DEFENDANT'S REQUEST TO CHARGE THE JURY AS FOLLOWS:** "Where a contract is entire, the complete performance is a condition precedent to the payment of the price, and no recovery can be had for a partial performance, unless the parties, by mutual consent, have agreed to sever the contract, or the defendant has himself repudiated it, or the plaintiff is justified by some fault of the defendant in abandoning it."

This request is an exact quotation of the language of the Court in *Brown v. Fitch, supra*, and it is submitted that it is a correct statement of the law. Its applicability to this case can readily be seen. A reference to the contract (State of the Case, page 19 to page 23) will show it to be entire and for one purpose, to wit: "The re-modeling and completion" of a house, etc. Speece, the builder and plaintiff in this case, admitted that he did not complete his contract, and the pleadings in this case

raise the question of abandonment as a matter of defense and considerable testimony was taken upon that question. Plaintiff Speece gave considerable testimony in an effort to justify his failure to complete the work in accordance with the contract. It is, therefore, submitted that the refusal of the Court to charge the jury as above requested was harmful error.

Appellant was entitled to the benefit of the charge predicated upon his contention as to the facts. In *Allen v. Wanamaker*, 31 Law page 371, the Court said:

"It is the duty of the Court, when requested to declare the law upon every point fairly involved in the cause, *Cole v. Taylor*, 2 Zab. 60. and the principle required to be charged is necessarily involved in that count."

See also *Scott v. Mitchel*, 41 Law 346.

#### XII.

**IT WAS ERROR FOR THE COURT TO REFUSE DEFENDANT'S REQUEST TO CHARGE THE JURY AS FOLLOWS:** "The promise of DelVecchio to make the installment payments is entirely independent of the promise of the contractor, Speece, to perform and complete the work."

This language is practically a verbatim quotation from the opinion of the Court in *Vine v. Kennedy Co.*, 2 N. J. Misc. Reports, 774. That case was founded upon a building contract wherein the owners had made the promise to pay the contract price in installments, and the Court, among other things, said:

“In this building contract the promises of the owners to make the installment payments are entirely independent of the promise of the contractor to perform and complete the work.”

In *Potts v. Point Pleasant Land Co.*, 49 N. J. L., 411, Mr. Justice Dixon, speaking for the Supreme Court, said:

“The covenant to complete the work and the covenant to make monthly payments are independent of each other.”

In the latter case there was the question of abandonment and the builder attempted to justify his failure to perform by proof of the failure of the defendant or owner to pay him what was due under the contract, by reason of which the contractor said it was impossible for him to pay his employees and go on with the work.

This situation was very similar to that presented in the case at bar, and the Court, speaking on this point, said:

“But this failure, while it would be evidence on the question whether the defendant had abandoned the contract and so discharged the plaintiffs, was not necessarily an abandonment and therefore could not be well pleaded as a release.”

For other cases upon this point see *Otis v. Adams*, 56 N. J. L., 38; *Blackburn v. Riley*, 47 N. J. L., 290; *Gerli v. Poidebard Silk Mfg. Co.*, 57 N. J. L., 432; *Empire Rubber Mfg. Co., v. Morris*, 77 N. J. L., 498.

## XIII.

**THE COURT ERRED IN REFUSING TO CHARGE DEFENDANT'S REQUEST AS FOLLOWS:** “The failure of DeVecchio to make payment as provided in the contract was not in itself an abandonment of the contract by him.”

This request is a quotation from the opinion of the Court in *Vine v. Kennedy Co.*, *supra*, wherein it was said:

“The Court pointed out that the covenants were independent of each other (speaking of *Potts v. Point Pleasant Land Co.*, *supra*,) and hence that a *failure to make payment*, although it was evidential in arriving at a determination as to whether the owner had evinced an intention to abandon the contract, *was not in itself an abandonment.*”

For other cases in support of this contention see also *Potts v. Point Pleasant Land Co.*, *supra*, and *Otis v. Adams*, *supra*.

## XIV.

**THE COURT ERRED IN REFUSING TO CHARGE DEFENDANT'S REQUEST, AS FOLLOWS:** “The covenant to complete the work and the covenant to make monthly payments are independent of each other.”

This request is to the same effect as that pointed out in Point XII of this brief, and it is submitted that the refusal of the Court to charge as here quoted was error for the reason cited in support of said twelfth point.

## XV.

**EXCEPTION WAS ALSO TAKEN TO THE REFUSAL OF THE COURT TO CHARGE DEFENDANT'S REQUEST, AS FOLLOWS: "If Speece has not substantially complied with the terms of the contract he cannot recover."**

An examination of the charge, however, will disclose that this request was covered in the Court's charge, and, therefore, the appellant does not press this exception.

## XVI.

**THE TRIAL COURT ERRED IN REFUSING TO CHARGE THE FOLLOWING REQUEST: "The completion of the building by DelVecchio after Speece had left the work, is neither presumptive nor conclusive evidence of such acceptance of Speece's work as would entitle Speece to recover in this suit."**

There was evidence in this case that after Speece, the contractor, had left the work DelVecchio undertook completion and did complete the work in accordance with the plans and specifications (State of the Case, page 143, lines 16 to 24). This work of completion was probably considered by the jury to be evidence of the acceptance of Speece's work and that in view of such acceptance plaintiff, Speece, was entitled to recover for the work which had been done and performed. This question was treated by this Court in *Bozarth v. Dudley*, 44 N. J. L., 304, and in the opinion delivered by Mr. Justice Magie, it was said:

"The rule most agreeable to the principles governing contracts is, it seems to me, this: When a contract for erecting a building has not been so performed that a recovery can be had thereon, a recovery in assumpsit upon the common counts for work and materials furnished in the erection, will only be permitted when the owner has actually accepted the building erected. The view that assumes acceptance from the mere fact that the edifice adds value to the land on which it stands, in my judgment unduly restrains the force of the contract of the parties, and deprives the owner of the right to reject an edifice not in substantial conformity with its terms. If thereby any apparent injustice seems done to the builder in retaining the materials put upon the property, it is the result of his own default, to which he must submit.

Such acceptance by the owner may be express or implied from his conduct. *It seems well settled that mere occupancy of the building by the owner, while appropriate, is neither presumptive nor conclusive evidence of acceptance.* The reason is obvious. The building belongs to the owner of the land on which it stands. As was said by Lord Campbell in *Munro v. Butt, supra*, the owner cannot be appropriately said to take possession of the building, for he has not been out of possession of that which is thus affixed to his own land. See cases cited in note to 2 Addison on Cont., §862; *Corwin v. Wallace*, 17 Iowa, 374; *Reed v. Board*, 3 N. Y., 104; *Smith v. Brady, supra.*"

It will be noted that the request which the Court

refused to charge in this case is practically an exact quotation from the above case. In view of the testimony in this case the applicability of the law as stated in said request cannot be questioned, and for the Court to have refused to charge it was harmful error.

## XVII.

**IT WAS ERROR FOR THE COURT TO REFUSE TO CHARGE DEFENDANT'S REQUEST, AS FOLLOWS: "Before Speece can recover in this suit he must establish as a fact that the work and materials for which he claims payment were actually furnished."**

It is so fundamental in law that the plaintiff, Speece, could not recover from the defendant unless he established as a fact that the work and materials had been furnished that the citation of any authority therefore is unnecessary. It is a foregone conclusion that without proof of the work having been done and the material furnished as contracted for said plaintiff could not recover. For the Court to have refused therefore to charge as requested was clear error and harmful to the interests of the defendant.

## XVIII.

**IT WAS ERROR FOR THE COURT TO REFUSE DEFENDANT'S REQUEST TO CHARGE AS FOLLOWS: "THE WORK AND MATERIALS CANNOT BE CONSIDERED AS FURNISHED UNTIL THE WHOLE CONTRACT IS COMPLETED."**

It is submitted that this request was justified in view of the case of *Derrickson v. Edwards*, 29 N. J. L., 468, wherein it was said at page 470:

"The contract is an entirety, and that, in the contemplation of the statute, the work and materials cannot be considered as furnished until the whole contract was completed."

## XIX.

**THE SUPREME COURT WAS IN ERROR IN AFFIRMING THE JUDGMENT OF THE TRIAL COURT.**

In the opinion of that Court (State of Case, page, ) it is said that "the principal grounds of appeal are that the Court refused to control the case by the granting of a non-suit or the direction of a verdict in favor of the defendant below, and it is urged in support of the motions made to that end in the Court below that the evidence for extras did not accord with the averments of the complaint and that the plaintiff failed to substantially perform the contract."

These cannot be considered "the principal

grounds of appeal." All the points are urged with equal force. And it is submitted that all of said points are supported in equal strength by law or fact or both. The exceptions to the charge of the trial Court and the refusal to charge defendant's requests are all harmful and vital error.

The Supreme Court said in its opinion that the contention of defendant below, to the effect that motions for non-suit and direction should have been allowed because the evidence for extras did not accord with the averments of the complaint, "entirely overlooked the fact that the complaint alleged moneys to be due for extras as well as under the contract." This was not overlooked but as has been already pointed out the complaint only warranted a recovery of the reasonable value of said extras if anything, when in fact the evidence was that each item of extra work was the subject of separate contract as to price. There was no evidence of reasonable value submitted. It is fundamental that the evidence must conform with the issue made by the pleadings. Defendant could not have been expected to meet the question of specific contract when the pleadings averred reasonable value.

The Supreme Court in its opinion further said that as to the further contention of defendant below, to wit, that plaintiff failed to substantially perform the contract, the proofs that the defendant had prevented full compliance with the original contract could not be ignored. There was no proof that plaintiff was *legally* justified in abandoning the work. It was testified to and claimed by plaintiff that he was prevented from completing the work because defendant failed to make payments as per contract. Our Courts have repeatedly held that fail-

ure to pay is not in itself legal reason for such an abandonment. (See previous argument in this brief.) Furthermore there was no testimony concerning when or how extras were to be paid for. They were not completely done. Can it be said that plaintiff was entitled to payment before performance and for refusal to pay he could leave the work incomplete?

It is earnestly submitted that in the state of all the testimony in this case the motions for non-suit and direction of verdict should have prevailed.

With respect to the other points in the opinion of the Supreme Court referred to as "error in the admission and rejection of evidence" and "in portions of the charge and denial by the court of certain requests presented for charge," reference is respectfully directed to the previous argument covering same in this brief.

It is earnestly and respectfully submitted that the judgment in this case should be reversed for the reasons herein stated.

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