

title by finding, so how can she become possessed—how can she be said to own this jewelry.

This appeal will have to be dismissed.

It is very generous of Mr. Smith to allow the Court to intervene; under the circumstances we hope that \$50 will satisfy the costs of the appeal.

The appeal is dismissed, with \$50 costs.

SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

NOVEMBER 3RD, 1913.

VANDERWATER v. MARSH.

5 O. W. N. 213.

Building Contract—Action by Contractor — Location of Building—Duty as to—Mistake by Contractor—Power of Clerk of Works to Bind Employers — Certificate of Architect not Obtained — Condition Precedent—Action Premature—No Evidence of Mala Fides on Part of Architect—Work not Performed to Satisfaction of Owners—Appeal—Costs.

KELLY J., 24 O. W. R. 133, dismissed an action by contractors against the owners of certain buildings and the architect thereof, for the price of certain excavations and concrete work done for the said buildings upon the ground that as the contract provided for payment to be made upon the certificate of the architect, which had not been obtained, and as no collusion or improper motives had been shewn to have actuated the latter, the action was premature.

"The power of a clerk of works is only negative, his power being only to disapprove of material and work, and not to bind the owner by approving of them."

SUP. CT. ONT. (1st App. Div.) *held*, that as the work had not been done strictly according to the plans and specifications of the architect and to his satisfaction, plaintiff could not recover.

Appeal dismissed with costs if respondents pay for extras ordered verbally, otherwise without costs.

Appeal by the plaintiff from a judgment of HON. MR. JUSTICE KELLY, dated 26th February, 1913, which was directed to be entered after the trial before him, sitting without a jury, at Belleville on the 15th November, 1912. See 24 O. W. R. 133; 4 O. W. N. 882.

The appeal to the Supreme Court of Ontario (First Appellate Division), was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS.