

as extra work. The misunderstanding in relation thereto arose largely from the fact that the architects' working plans as originally drawn, designated the "public space" on the second floor as "ceramic mosaic flooring." After the preparation and colouring of the plans, the word "ceramic" was struck out. Plaintiffs contend that this change was not made until after they had prepared and submitted their tenders in October and November, 1909, and they place reliance upon the form of their tender of March 15th, 1911, where it was said the work was to be "according to specifications and plans as they were when we originally figured on this job"; and they argue that this, taken with what they maintain was the condition of the plans when they tendered in October, 1909, excludes the disputed work from their last tender.

According to the evidence of the architect, Miller, the plans were prepared prior to October, 1909, the specifications for the mosaic and tile work were engrossed and in his hands as early as October 13th, 1909, and immediately afterwards he gave instructions to have them coloured; and he says they were coloured, and the word "ceramic" was struck out before the tenders were called for. There is other evidence also upon this point, and the conclusion on the whole evidence is reasonable, that this change was made prior to the time that plaintiffs submitted their first tender to the architects.

On other grounds as well, I think plaintiffs' claim as to this item is not sustainable. Their tender of October 27th, 1909, to the architects, was made "according to plans and specifications furnished by you"; their next tender on November 10th, 1909, was "according to plans, specifications and designs." Though they say they had not examined or seen the specifications until after that time, the form of their tenders recognized the existence of specifications, and they must be taken to have tendered and to have intended to contract with reference thereto and subject to their terms and conditions. Moreover it is shewn beyond doubt that the specifications for this very work were in the hands of the architects before the tenders were submitted.

The specifications relating to the floor and wall tiling contain the following: "2nd Floor Plan: The public space will be laid with marble mosaic tile with borders approved (see coloured plan shewing floor space to be tiled)."