panels not being as ordered; that it had not been explained to defendant that the greater part of the granite would be so treated by the process of fine axing as to present a white or light appearance, and only the polished tablets be dark in colour; and therefore that defendant was not bound to accept or pay for the monument.

A. B. Aylesworth, K.C., and J. N. Fish, Orangeville, for appellants, plaintiffs.

T. Hislop, for defendant.

The judgment of the Court (ARMOUR, C.J.O., OSLER, MACLENNAN, MOSS, JJ.A.—LISTER, J.A., having died after the argument) was delivered by

MOSS, J.A., who, after setting out the facts and the evidence, and disposing in favour of plaintiffs of the question whether, assuming the monument to be of the design selected, it so corresponded in workmanship and detail with the design as to justify plaintiffs in maintaining that the contract had been so performed as to entitle them to be paid for it, proceeded as follows:—

The next objection is that the assignment to the plaintiffs does not entitle them to maintain this action in their own names.

It is said that the instrument is not an absolute assignment and that it is shewn that the plaintiffs are not the beneficial owners of the claim. But it purports to be an absolute assignment and does operate to pass the legal interest. It is not necessary for this purpose to use the word "assign" or any particular words, so long as the effect of the writing is to transfer the interest to the assignees. The intention was to transfer the interest so as to enable the assignees to sue. The fact that the fruits will be held by them in trust does not the less make it an absolute assignment under the Judicature Act, there being an assignment which purports to be absolute, and which the parties intended to be so: Warren, Choses in Action, 2nd ed., p. 164, and cases cited. The case of Mercantile Bank of London v. Evans, [1899] 2 Q. B. 613, on which reliance was placed, does not govern this case. There, as was pointed out by the Court of Appeal, the instrument did not purport to be an absolute assignment, and was probably only an assignment by way of charge. The case of Comfort v. Betts, [1891] 1 Q. B. 737, is in point, and shews that the assignment in question here is an absolute assignment within the Judicature Act. It is to be noted that when this point was under discussion at the trial, the learned