

crete foundations, as to make a deviation from rectangular, of about three feet, six inches, in a distance of about one hundred and twenty-two feet. Not only would this affect the appearance of the building, but there would be increased expense on the part of the contractors, for other works on the building—such as the contractor for the steel work, and the bricklayer—if the buildings were completed on the foundations so built.

E. Gus. Porter, K.C., and Carnew, for the plaintiff.

Morden & Shorey, for the defendants, Marsh & Henthorn Ltd.

Tilley, for the defendant, Herbert.

HON. MR. JUSTICE KELLY:—The error in the construction resulted from an improper locating of the lines of the buildings, and concerning which, much evidence was given at the trial. Plaintiff contends that it was the duty of the defendants to lay out the ground, and that he was misled by stakes driven in the ground, and which he claims were placed there by the defendants, the owners. No such duty, however, devolved upon the defendants, either by contract or, as the evidence shews, by usage.

He further contends that John Marsh, who in the interests of Marsh & Henthorn, Ltd., was on the ground during the building operations, and whom the plaintiff calls the clerk of the works, designated to him the location of the foundations. That I do not find to be the fact, but even were it so, and even if John Marsh were the clerk of the works, that, in my view, would not protect the plaintiff. The powers of the person holding the position of clerk of the works, is only negative, that is to say, his power is only to disapprove of material and work, and not to bind the owner of the building, by approving of them. Halsbury, vol. 3, p. 163. There is no evidence that defendants authorized John Marsh to locate the buildings, or to instruct plaintiff where to place them.

Defendants provided plaintiff with a block plan, and other plans of the property, and proposed buildings, shewing the general location thereof, and while it was not the duty of the defendants to otherwise locate the lines of the buildings, the evidence shews (part of it being that of a witness called for the plaintiff) that the proper location could, with-