

HON. MR. JUSTICE KELLY:—Defendants were the contractors for the tile and mosaic work in the erection of the building known as the Toronto General Trusts Corporation Building in Toronto.

Plaintiffs were the sub-contractors under the defendants for the terrazzo and mosaic work.

The chief item in dispute is a charge of \$612.54 for marble and mosaic flooring on the second floor of the building.

Plaintiffs, on October 27th, 1909, tendered to the architects, Miller & Co., for ceramic floor and setting tile wainscoting, and also, by separate offer, for furnishing and laying terrazzo floors, Roman marble mosaic, and furnishing and setting window sills. On November 10th, 1909, they sent in another tender for furnishing and laying complete terrazzo floor, terrazzo base, marble mosaics, and setting window sills, according to plans, specifications and designs; and therein they cancelled their previous proposal. These tenders were not accepted, and the contract above referred to, was let to the defendants. Defendants and the architects were desirous of having the mosaic work done by the plaintiffs, and accordingly, on March 15th, 1911, plaintiffs submitted to defendants a written tender as follows: "In reference to terrazzo and mosaic work for the Toronto General Trusts Corporation Building, we are pleased to give you our price for all the work according to specifications and plans as they were originally when we figured on this job," and then they named the price. Prior to this tender, plaintiffs' manager accompanied Mr. Vokes to the architects' office and there examined the plans and read the specifications.

Defendants, on March 29th, 1911, accepted plaintiffs' tender "for your supplying and applying, according to plans and specifications and details as shewn you, and to the satisfaction of the architects, all marble mosaic and terrazzo work as contained in such plans and specifications," etc.

No exception was taken to the terms of this acceptance, nor was any question raised as to the tender not including the "public space" on the second floor, until several months later when defendants called upon plaintiffs to do that part of the work. The plaintiffs set up that their tender did not include this particular work; they proceeded to do it, however, expressly reserving their right to claim payment for it