The material purchased was subject to the defendants' inspection and approval, but that inspection should have been at the point of delivery. Some of the tile was accepted and imbedded by defendants' servants, but it was afterwards exhumed and re-shipped to plaintiff as being unfit for use.

I think the plaintiff is entitled to recover. I do not accept in its entirety the evidence offered by defendants of the extremely bad quality of the material. If I were making an allowance for non-delivery according to the contract, I would base it on the evidence of Robert L. Orr, section foreman and witness for defendants, who says that 46 lengths in all were total loss and the remainder were good for practical purposes. There were 260 lengths delivered, so that one-fifth, or $75, would be a fair allowance; but, in view of the strong evidence as to the quality of the tile when shipped and the care taken by plaintiff to protect it from damage in transit, I am of the opinion that the breakages were caused by rough treatment on the cars, or in unloading, and I therefore give judgment for the full amount, with costs.

ANGLIN, J. FEBRUARY 9TH, 1909.

TRIAL.

JARVAS v. TORMEY.

Landlord and Tenant — Agreement for Lease—Relinquishment of Rights by Plaintiff—Burden of Proof—Delay in Commencement of Action—Refusal of Specific Performance—Discretion—Damages for Breach of Agreement—Measure and Quantum — Value of Premises — Loss of Profits—Compensation for Loss of Lease—Increase in Rental Value.

Action for specific performance by the defendant of an agreement for the lease of shop premises in Rideau street, in the city of Ottawa, and also for damages for wrongful exclusion, possession of the premises, mesne profits, an injunction restraining the defendant from using or occupying the premises, a mandamus directing him to execute a lease