

The plaintiffs alleged that in March, 1900, the defendant gave to a firm of McIntyre & Gardiner an order in writing for a grave stone or monument of red Scotch granite of the kind known as "Hill o' Fair," to be delivered and set up in a cemetery, for \$1,500, and that the order was duly executed; that McIntyre & Gardiner duly assigned to plaintiffs all claim against defendant in respect of such order, and that the defendant was duly notified in writing of the assignment; and the plaintiffs sought to recover \$1,500, less \$54, the expense of putting in the foundation for the monument, which was paid by defendant.

There were several defences, but the main contest at the trial was in reference to one which was added at the trial, viz., that the monument erected by McIntyre & Gardiner was made and erected according to an entirely different design from the one selected by defendant.

The plaintiffs proved the execution of and put in an instrument in writing signed by McIntyre & Gardiner, by which they purported to assign to plaintiffs all their claim against defendant, amounting to \$1,446 and interest, for goods supplied under contract dated 8th March, 1900, or otherwise howsoever; and also proved notice thereof to defendant. They also proved the signature of defendant to two documents, the first of which was an order for red granite grave-stones "design No. E. M. Lewis Reporter Design," and the second an order for "one set of Hill o' Fair Scotch granite grave-stones."

The monument furnished and put up in defendant's plot in the cemetery was of "Hill o' Fair" red Scotch granite, substantially answering in appearance and design to the design produced by plaintiffs.

The defendant did not dispute his signature, but swore that the design specified in the first of the papers, viz., "E. M. Lewis Reporter Design," was not in the paper when he signed it, and that the design produced by plaintiffs as the one he selected was never shewn to or seen or selected by him, but, on the contrary, an entirely different design was shewn to and selected by him.

The Chancellor found upon the evidence, a great deal of which was contradictory, that credit was to be given to that of defendant; that the monument erected in the cemetery was not what defendant contracted for or expected to get; that it was different in colour and design; that defendant had had no opportunity of seeing the monument until he saw it for the first time in the cemetery, and that he then condemned it both as to colour and design—the pillars and