

tember. He thereupon repudiated the transaction, demanded back his money and threatened suit.

There will be judgment declaring; that the agreement in the pleadings mentioned is null and void and directing it to be delivered up to be cancelled; and that the defendant shall pay to the plaintiff the sum of \$1,225, with interest thereon from the 3rd August, 1912, and the costs of this action.

And dismissing the defendant's counterclaim with costs to the plaintiff.

---

HON. MR. JUSTICE KELLY.

FEBRUARY 26TH, 1913.

VANDEWATER v. MARSH.

4 O. W. N.

*Building Contract—Action by Contractor—Location of Building—Duty as to—Mistake by Contractor—Power of Clerk of Works to Bind Employers—Certificate of Architect not Obtained—Condition Precedent—Action Premature—No Evidence of Mala Fides on Part of Architect.*

KELLY, J., dismissed an action by contractors against the owners of certain buildings and the architect thereof, for the price of certain excavations and concrete work done for the said buildings, upon the ground that as the contract provided for payment to be made upon the certificate of the architect, which had not been obtained, and, as no collusion or improper motives had been shewn to have actuated the latter, the action was premature.

"The power of a clerk of works is only negative, his power being only to disapprove of material and work, and not to bind the owner by approving of them."

An action brought to recover the contract price and extras for the excavation and concrete work in the erection of certain buildings for defendants, Marsh & Henthorn, Ltd., in the city of Belleville, of which defendant Herbert was the architect.

The contract was dated May 10th, 1912; the price to be paid for the work contracted for was \$2,400, and in addition thereto the plaintiff claimed \$761.65 as extras for additions and alterations which he claimed he made at the request of the defendants.

At the time of the trial nothing had been paid to the plaintiff, either on the contract or for extras, but the work was not then fully completed. The contract called for the buildings being rectangular in form, and difficulties arose by reason of plaintiff having so constructed some of the con-