In addition, the plaintiffs claimed to charge the defendant with caretaking and stocktaking, $123; advertising, $10, and commission on the re-sale. They would have had to take stock if the defendant had completed his contract — there was no need of expenditure for caretaking, and commission is out of the question. As to the advertising, although there is no evidence that any loss resulted from the change of method adopted, yet I think the plaintiffs should have advertised the second sale in about the same method as they did the first, and I strike off this item. It is true that the defendant knew of the situation and did nothing and made no complaint.

The only difficulty I have felt in deciding this case is to determine what amount the defendant should be compelled to pay. After careful thought I have come to the conclusion that he should pay the difference between the amount he was to pay and the sum realized upon a re-sale—the evidence being that the stock had of course to be re-sold and the best possible price was obtained.

There will be judgment for $1,981, with interest from the 24th of May, 1912, and costs.

HON. MR. JUSTICE KELLY. SEPTEMBER 12TH, 1913.

ITALIAN MOSAIC AND MARBLE CO. v. VOKES.

5 O. W. N. 15.

Building Contract—Action by Sub-contractor—Variation in Plans—Tender—Disregard of Specification—Progress Certificates—Condition Precedent to Payment — Action Brought Prematurely—Costs.

KELLY, J., *held*, that where plaintiffs, contractors, did not prove that they had obtained architects' certificates shewing themselves entitled to payments according to the terms of the contract, their action was premature.

Action by plaintiffs, sub-contractors, for materials furnished and work done for defendants, contractors, upon the Toronto General Trusts Corporation Building, Toronto.

G. Wilkie, for the plaintiffs.

G. Osler, for the defendants.