

1906 for the sale and delivery of certain asphalt paving blocks and for a declaration that the plaintiffs were entitled to retain the balance of certain sums now held by them by way of drawback, and also against the asphalt company and the United States Fidelity and Guaranty Company to recover the penalties payable under two bonds which were respectively conditioned upon the fulfilment of certain covenants as to the quality of the asphalt blocks to be furnished under the two contracts.

The action was tried without a jury at Stratford.

R. S. Robertson and W. G. Owens, for the plaintiffs.

J. H. Rodd, for the defendants the Ontario Asphalt Block Company.

W. B. Milliken, for the defendants the United States Fidelity and Guaranty Company.

ORDE, J., in a written judgment, dealt at length with the facts, and made findings thereon. He directed that judgment should be entered in favour of the plaintiffs as follows:—

(1) Declaring that the plaintiffs have sustained damage in respect of the 1905 contract, in excess of the moneys already expended upon repairs, to the extent of \$7,500.

(2) Declaring that the plaintiffs are entitled to apply the whole of the moneys at the credit of the 1905 drawback account, namely, \$3,306.31, and the interest accrued thereon since the 31st December, 1919, towards the payment of such damages.

(3) Against the defendants the asphalt company and also against the defendants the guaranty company for the balance of the said sum of \$7,500, after applying the amount of the said drawback and interest.

(4) Declaring that the plaintiffs have sustained damage in respect of the 1906 contract, in excess of any moneys already expended upon repairs, to the extent of \$5,000.

(5) Declaring that the plaintiffs are entitled to apply the whole of the moneys at the credit of the 1906 drawback account, namely, \$1,495.77, and the interest accrued thereon since the 31st December, 1919, towards the payment of the said last mentioned damages.

(6) Against the defendants the asphalt company for the balance of the said sum of \$5,000, after applying the amount of the said drawback and interest as aforesaid.

(7) Against the defendants the guaranty company for the sum of \$2,000 in respect of their liability upon the 1906 guaranty