

I have not found in the papers filed anything to shew that Albert E. Knox renounced or is dead. Before the order issues, there must be an affidavit filed shewing that John Beaird is, and how he became, sole executor.

The order shall reserve the right to the executor to make application to be reinstated within twenty days after service upon him of the order.

KELLY, J.

JANUARY 31ST, 1913.

MAPLE LEAF PORTLAND CEMENT CO. v. OWEN SOUND
IRON WORKS CO.

*Contract—Sale of Goods—Liability of Vendors or of Agent for
Breach—Contract Made through Agent—Correspondence—
Conduct—Passivity—Estoppel.*

Action for damages for breach of a contract for the sale and delivery by the defendants to the plaintiffs of an Emerick pulverizer and an Emerick separator, for use in the plaintiffs' cement business at Atwood, Ontario, and for a return of the money paid and a promissory note given by the plaintiffs.

The defence of the defendant company was, that there was no contract between it and the plaintiffs; that the plaintiffs' dealings were with the defendant Moyer only, who, the defendant company alleged, had a contract with the defendant company to do certain work upon such machines as were sold to wards purchased, and of which, as he stated, the defendant company's agent.

The defendant Moyer's defence (as delivered) was, in effect, that the contract for the sale and delivery of the machines had been fulfilled. Moyer was not represented at the trial.

W. G. Thurston, K.C., for the plaintiffs.
R. McKay, K.C., for the defendant company.

KELLY, J.:—Moyer, who held himself out as representing the defendant company, had several interviews with the plaintiff Pearson, president of the plaintiff company, with a view to inducing that company to purchase machines such as were afterwards purchased, and of which, as he stated, the defendant company was the maker.