

Plaintiff's contention upon the argument of the appeal was that the claim of the plaintiff was not for goods sold but for work and labour performed and materials supplied, and that the Statute of Frauds had therefore no application.

We do not find it necessary to consider the cases cited by the learned counsel for the plaintiff, for, as far as we are concerned, the question has been conclusively determined by a decision of the Court of Appeal, *Canada Bank Note Engraving and Printing Co. v. Toronto R. W. Co.*, 22 A. R. 462, and determined adversely to plaintiff's contention. In that case the plaintiffs were engravers and lithographers, and the contract was with them for supplying the defendants with certain bonds and coupons to be printed by the plaintiffs, in a special form, with special wording, prepared by the defendants, upon paper purchased by the plaintiffs, and one of the questions was as to the application of the Statute of Frauds to a contract of that kind.

I am unable to distinguish that case from the case at bar. I can see no difference between the supplying of the bonds and coupons in that case and of the labels in this. The bonds and coupons when completed were not in the hands of the plaintiffs saleable to any one but the defendants except as waste paper, any more than are the labels in this case in the hands of the plaintiff.

Nor do I think the case comes within the rule suggested by Mr. Justice Stephen and Sir Frederick Pollock: "A contract by which one person promises to make something which when made will not be his absolute property, and by which the other person promises to pay for the work done, is a contract for work, although the payment may be called a price for the thing, and although the materials of which the thing is made may be supplied by the maker:" *Law Quarterly*, vol. 1, p. 10.

The appeal must be dismissed with costs.