YORK SAND AND GRAVEL LIMITED v. WILLIAM COWLIN AND SON (CANADA) LIMITED—SUTHERLAND, J.—MARCH 25.

Contract—Formation—Correspondence—Sale of Goods—Delivery and Acceptance—Payment for Certain Deliveries—Evidence—Agency for another Company—Action for Price of Goods.]—The defendants, builders and contractors, had, in association with the John ver Mehr Engineering Company Limited, a contract with the Corporation of the City of Toronto, for the erection of a filtering plant upon the Toronto Island. The engineering company had entered into correspondence with the plaintiffs, who were dealers in sand and gravel, with reference to the sale by the plaintiffs to the engineering company of 6,000 cubic yards of sand and 400 to 800 cubic yards of gravel. The correspondence continued from August to October, 1915. The plaintiffs, having apparently learned that the defendants were interested, wrote to the defendants on the 16th October, 1915, saying: "Please let us know when you expect to take delivery of sand." The defendants answered; there was further correspondence; and at the end of April and afterwards certain quantities of sand and gravel were delivered by the plaintiffs to and received by the defendants and some of them paid for. The engineering company asserted that the plaintiffs had entered into a contract with them; and, upon the plaintiffs declining to supply sand and gravel in accordance with the alleged contract, the engineering company intimated that they would get the material elsewhere and hold the plaintiffs responsible for their failure to supply material according to contract. Thereupon the plaintiffs discontinued their deliveries, and rendered the defendant an account for a balance due for what they had supplied, amounting to $1,288.85. This account not being paid, the plaintiffs sued the defendants for that sum. The defendants denied liability and counterclaimed for non-delivery of the material they required and for delay etc. The action was tried without a jury at Toronto. The defendants offered no evidence. SUTHERLAND, J., in a written judgment, said that the plaintiffs had shewn a contract with the defendants upon which they could recover. From April to September, 1916, the plaintiffs treated the defendants as their customers, and the defendants acted as purchasers, receiving all the material, paying for part of it, and referring to it in their correspondence as material for "our requirements." No agency of the defendants for the engineering company to receive delivery of the material was made out or notice thereof shewn to have been brought home to the plaintiffs.