

There is an entire absence of any agreement, express or implied, that payment should be elsewhere than in Toronto.

No doubt, plaintiffs asked Edelman to draw for amount of this invoice, but defendants did not accept. Defendants stood and now stand by their original agreement, whatever that was; so plaintiffs have not lost any original rights by merely attempting to get a settlement, by the attempted intervention of the persons in Germany who sold the goods to plaintiffs.

Plaintiffs have made out a case for the jurisdiction of the Court in Ontario. They say the contract was to be performed in Ontario, and that there are breaches of that contract in Ontario. . . . So far as now appears, in whatever way plaintiffs seek to recover, they do so by reason of an alleged breach in Ontario of a contract to be performed in Ontario. . . .

[Phillips v. Malone, 3 O. L. R. 492, 1 O. W. R. 200, and Dewie v. Gans, [1904] 2 K. B. 685, referred to.]

Appeal dismissed with costs to plaintiffs in any event.

CARTWRIGHT, MASTER.

NOVEMBER 21ST, 1904.

CHAMBERS.

F. T. JAMES CO. v. DOMINION EXPRESS CO.

Discovery—Production of Documents — Privilege — Contemplated Litigation—Affidavit on Production.

Action to recover damages for breach of contract by defendants and resulting injury to fish contained in two cars which were to be sent by express from Selkirk to Toronto, as set out in statement of claim.

At the time when these two carloads were shipped to plaintiffs, two other carloads of fish were shipped to the Wolverine Fish Co., who also sued defendants.

Certain letters had passed between plaintiffs and the Wolverine Fish Co., but these plaintiffs decline to produce, on the ground of privilege, which was set out in the 10th paragraph of plaintiffs' affidavit on production, as follows:

"The letters and documents above referred to marked 'A,' 'B' and 'C' in respect of which privilege is claimed, were all dated on or after the day upon which the fish in question in this action ought to have arrived in Toronto, and relate to the arrival of the two carloads of fish shipped to the Wolverine Fish Co., Limited, as well as to the arrival of the