

HON. MR. JUSTICE KELLY.

JANUARY 31ST, 1913.

MAPLE LEAF PORTLAND CEMENT COMPANY,
LIMITED, ET AL V. THE OWEN SOUND IRON
WORKS COMPANY, LIMITED, ET AL.

4 O. W. N. 721.

*Evidence—Estoppel—Passivity—Contract for Sale of Machinery—
Repudiation of Agent by Principal—Laches.*

KELLY, J., *held*, that defendants were precluded from denying their liability upon a contract for the sale by them of certain machinery, or that one Moyer had been their agent in the making thereof, where they had received acceptances from plaintiffs of the proposal to sell bearing on their face a statement that they were subject to confirmation by defendants, had held plaintiffs' note payable to their order, and had twice drawn on plaintiffs in respect thereof, and where the whole correspondence between the parties shewed that plaintiffs thought they were dealing with defendants, and defendants had never repudiated the idea until the machinery sold proved worthless.

Keen v. Priest, 1 F. & F. 314; *Wiedemann v. Walpole* [1891] 2 Q. B. 534, referred to.

[See, also, *Meikle v. McRae*, 20 O. W. R. 308, at p. 310.—Ed.]

Action for damages for breach of a contract alleged to have been entered into with the defendants for the sale and delivery of certain machines, an Emerick Pulverizer and an Emerick Separator, for use in the plaintiffs' cement business at Atwood, Ont.

The defence of the defendant company was, that there was no contract between them and plaintiffs, that plaintiffs' dealings were with the defendant Moyer only, who, they alleged, had a contract with the defendant company to do certain work upon such machines as were sold to plaintiffs, and that Moyer was not their agent. Moyer's defence as set up in the statement of defence, was in effect that the contract for the sale and delivery of the machinery in question, had been fulfilled. He was unrepresented at the trial.

W. G. Thurston, K.C., for plaintiffs.

R. McKay, K.C., for defendants.

HON. MR. JUSTICE KELLY:—Moyer, who held himself out as representing the defendant company, had several interviews with 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 he stated the defendant company were the makers.