

R. S. Robertson, Stratford, for plaintiff.

A. J. Russell Snow, K.C., for defendants the Arts and Crafts Limited.

W. H. Garvey, for defendant Carscallen.

G. W. Holmes, for defendant R. W. Menzie.

H. W. Mickle, for defendants Sutton & Co., S. T. Sutton, and Grace Sutton.

RIDDELL, J.:—This action, reported upon a question of practice in 11 O. W. R. 589, 645, came on for trial before me at the non-jury sittings, Toronto.

I find the following facts. In January, 1907, Grace Sutton, R. W. Menzie, and H. M. Carscallen, 3 of the defendants in this action, formed a co-partnership under the name and firm of S. T. Sutton & Co., to carry on the business of real estate and insurance agents, and a certificate was registered in the registry office. No other certificate was ever registered in respect of the partnership so formed; but in May, 1907, Menzie and Carscallen withdrew from the firm, assigning to one Charles E. Boyd, who took their place with the consent of Grace Sutton, the other partner. Sherman T. Sutton had been from the beginning of the partnership manager for the firm, and he continued as such throughout all the time of importance in the present inquiry.

The Arts and Crafts Limited, being tenants of certain property, employed S. T. Sutton & Co. to procure some one to take their place as tenant, and the plaintiff called upon S. T. Sutton & Co. All his dealings were with Sherman T. Sutton, and he did not know and never considered who constituted the firm. On 14th October, 1907, he made an offer in writing to S. T. Sutton & Co., and at the same time made a deposit by cheque "of \$325 to be applied on the rent, providing this offer is accepted." The offer was not accepted, but another was substituted for it; this was not accepted until after the plaintiff had withdrawn it, which he did on 22nd October, 1907. The cheque had been deposited to the credit of S. T. Sutton & Co., and most, if not all, of the proceeds thereof shortly thereafter withdrawn by Sherman T. Sutton for his own use. Sherman T. Sutton promised to repay the money several times, but did not do so. The plaintiff never took possession.