

Ont.]

[Oct. 3.]

MORANG v. LE SUEUR.

Contract—Literary work—Publisher and author—Obligation to publish.

In 1901 M. & Co., publishers of Toronto, and L., an author in Ottawa, signed an agreement by which L. undertook to write the life of the Count de Frontenac for a work entitled "Makers of Canada" in course of publication by M. & Co.; the latter agreed to publish the work and pay L. \$500 on publication and a like sum when the second edition was issued. This contract was carried out and the publishers then proposed that L. should write, on the same terms, the life of Sir John A. Macdonald, for which that of William Lyon Mackenzie was substituted. L. prepared the latter work and forwarded the manuscript to the publishers, who refused to publish it as being unsuitable to be included in the "Makers of Canada." L. then tendered to M. & Co. the amount paid him in advance for his own work and demanded a return of the manuscript, which was refused, M. & Co. claiming it as their property. In an action by L. for possession of his manuscript,

Held, affirming the judgment of the Court of Appeal (20 O.L.R. 594), Idington and Anglin, JJ., dissenting, that he was entitled to its return.

Held, per Fitzpatrick, C.J., that the property in the manuscript (or what is termed literary property) has a special character distinct from that of other articles of commerce; that the contract between the parties must be interpreted with regard to such special character of the subject-matter; that it implies an agreement to publish if accepted; and when rejected the author was entitled to treat the contract as rescinded and to a return of his property.

Held, per Davies and Duff, JJ., that there was an express contract for publication on breach of which the manuscript should be returned.

Held, per Duff, J., that the publishers could be treated as trustees of the manuscript for publication and that purpose failing there was a resulting trust in favour of the author.

Appeal dismissed with costs.

Hellmuth, K.C., for appellants. *Lafleur*, K.C., for respondent.