TEAGLE & SON v. TORONTO BOARD OF EDUCATION—SUTHERLAND, J.—MAY 27.

Building Contract—Extras—Counterclaim—Refusal of Contractors to Execute Contract for another Building—Contract Let at Higher Rate—Neglect to Re-advertise after Rejecting Lower Tenders—Tender not Accepted by Corporation under Corporate Seal—Costs.]—Action by contractors to recover a balance of $1,194 on a contract for the mason work upon the school-building of the Harbord Collegiate Institute, and $561.20 for extras. Included in the extras was an item for $150 for "additional thickness to reinforced concrete floor and alterations made by City Architect before granting permit." The defendants conceded the plaintiffs' claim for $1,194; but counterclaimed for $1,161 in respect of a contract for the mason work on the Earlscourt school-building. The plaintiffs tendered for that work at $13,200, and their tender was accepted, but they refused to execute a contract or do the work; and the defendants said that they were compelled to make a contract at $14,361 with Hewitt & Son. The $1,161 was the difference. The defendants admitted the plaintiffs' claim for extras to the extent of $414.26, being the whole claim, less the $150 item, which was in dispute; and, pending the action, paid the plaintiffs $414.26 and $33 for the difference between $1,194 and $1,161.—The plaintiffs at or before the trial sought leave to amend by increasing the $150 item to $684. They said that they did not know, when tendering, that the work was to be done on the Kahn system, which was more expensive. Upon the evidence, the learned Judge came to the conclusion that the plaintiffs did know that the Kahn system was being required, or should have known in time to make a complaint before going on with the work; and, having allowed it to proceed without doing so, they could not now be heard to make the claim.—The plaintiffs, in reply to the counterclaim, alleged that the tender for the Earlscourt school-building was put in as part of the tender for the Brown school-building, and that by reason of the defendants' course of dealing with the Brown school tender (which was said to have been unfair to the plaintiffs) they were relieved from any liability with respect to the Earlscourt school tender. As to this, the learned Judge said that the tenders were not combined, but separate; and refused to give effect to the plaintiffs' contention in this regard.—Another contention of the plaintiffs in regard to the counterclaim was, that the tender accepted by the defendants for the Earlscourt building, after the plaintiffs had refused to sign the con-