party before him was given exclusively to the justices, and following *Rex* v. *Simpson*, 1 Str. 46, that it must be assumed that he exercised it.

Full Court.] WILSON v. WINDSOR FOUNDRY CO. [March 14.

Contract in writing—Receipt of parol evidence to vary or supplement—Burden of proof—Concluded agreement.

Plaintiffs who carried on business in Montreal as co-partners under the name of A. R. W. . . Co. brought an action against defendants to recover $350; price of an engine which defendants had ordered from them in writing, through plaintiff's agent W.

The order addressed to plaintiffs, and signed by defendants was in the following form:

"Please furnish one fifty horse power engine for which we agree to pay you $350, delivered in Halifax. Shipment to be made as soon as possible." The main defence set up to the action was that at the time defendants ordered the engine they supposed and were led to believe that they were dealing with a company carrying on business in Toronto under the name of A. R. W. & Co., Ltd., with which they had had previous dealings, and which at the time had in its possession a crusher belonging to defendants of the value of $780, which it was agreed was to be accepted in payment for machinery to be ordered by defendants. The learned trial judge found as a fact that the business carried on in Montreal was distinct from that carried on in Toronto, but that at the time the defendants gave the order in question they did so under the belief that they were contracting with the Toronto concern, and that there was everything in the surrounding circumstances to lead to the belief that the businesses carried on in Montreal and Toronto were one and the same, particularly the letter heads of the Toronto company which described the Montreal business as one of their branches. For these reasons the learned trial judge held that plaintiffs were bound by the bargain made by their agent W., and on the ground that it was not inconsistent with the written agreement to prove that payment was to be made in some other way than by cash, received evidence of the agreement relied upon by defendants as to the receipt of the crusher in the possession of the Toronto company in payment for the machine ordered.

Per MCDONALD, C.J., RITCHIE, J. concurring.

Held, that the evidence fully supported the finding of the trial judge that the acceptance of the crusher in payment for the engine ordered was a term of the contract between the parties.

Held, also, that the evidence of the agreement was properly received on the grounds stated by the learned trial judge in his judgment.

Per WEATHERBE, J., MEAGHER, J. concurring.

Held, that the order delivered by defendants to plaintiffs' agent being on its face a complete agreement, parol evidence was inadmissable to vary