

appointed F. Edwards & Co. their agents for a large territory for 5 years from the 30th April, 1914. The plaintiffs bound themselves to sell to the defendants, at stated prices, during the 5 years, the brands which the defendants might order. The western Provinces of Canada were to be worked under a joint management between the parties, each paying half the expenses, including those of a special representative. One paragraph of the agreement read as follows: "The said F. Edwards also undertakes himself to visit the Provinces of Manitoba, Saskatchewan, Alberta, and British Columbia at least once a year," etc. The name "F. Edwards" did not appear in the earlier parts of the contract except as part of the words "F. Edwards & Co." The signature was "F. Edwards & Co." Though made by Frederick Edwards, and, as he asserted, in his capacity as attorney for his wife, it was not expressed to be by procuration, nor did it indicate in any other way a want of identity between Frederick Edwards and F. Edwards & Co. If the plaintiffs had known that Laura Ellen Edwards was "F. Edwards & Co.," they would not have made the agreement on which her claim to reimbursement or damages was based.

The plaintiffs, after the war began, refused to supply whisky at the prices stated in the contract, alleging that they were relieved from their contract by the Immature Spirits (Restriction) Act of 1915, 5 & 6 Geo. V. ch. 46 (Imp.) That statute did not, however, apply to spirits exported for use in the colonies.

Another ground set up by the plaintiffs was, that the Ontario Temperance Act, 1916, altered the position of their agents in Ontario. The defendants opened an establishment in Montreal, but refused to make a new agreement. A lengthy correspondence ensued.

None of the transactions between the plaintiffs and defendants after December, 1916, fell under the agreement of April, 1912; but all resulted from orders given by the defendant firm through Frederick Edwards. Each order when accepted constituted a distinct contract.

As a matter of law the counterclaim could not be maintained. As between Laura Ellen Edwards and the plaintiffs there was no consensus of mind which could lead to any contract: *Cundy v. Lindsay* (1878), 3 App. Cas. 457, 465. There was plainly a mistake by the plaintiffs as to the identity of the person with whom they were contracting. They were induced by Frederick Edwards to believe that they were contracting with him. The contract involved personal service by Edwards of an important character, which they would not have thought of employing his wife to perform. To entitle F. Edwards & Co. or Laura Ellen Edwards to recover damages for breach of a contract which the