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DIVISIONAL COURT.

BESSEMER GAS ENGINE CO. v. MILLS.

*Company—Extra-provincial Corporation—Sale of Goods in Ontario without License — Resident Agent — Action for Price—Dismissal—Costs.*

Action in the County Court of Lambton to recover the price of a gas engine sold and delivered by plaintiffs to defendant and accepted by defendant, and the sum paid by plaintiffs for freight and duty.

Plaintiffs were a foreign corporation, having their head office in the State of Pennsylvania, and defendant was an oil operator residing in the township of Sarnia, in the Province of Ontario.

On 6th June, 1903, plaintiffs wrote to one W. H. Fogle, an oil operator residing near defendant, authorizing Fogle to sell their engines at certain prices specified in a price list furnished to him; they agreed to allow him a discount of 10 per cent. from the prices therein set forth, and they asked him to take great care to sell only to responsible persons.

On 10th September, 1903, Fogle sold an engine for plaintiffs to defendant at the schedule price, and wrote to them asking them to send it at once, which they did. After using it for some time, defendant complained of its work, and endeavoured to get plaintiffs to make a reduction from the price, which they refused to do. They then brought the present action, and defendant set up several defences to it. He denied any contract with plaintiffs, and alleged that he had purchased from Fogle; he alleged that the engine had been unskilfully set up by Fogle, and claimed \$175 damages by reason of the manner in which it had been set up; he disputed the contract price claimed by plaintiffs; and he set