

LATCHFORD, J.

JANUARY 4TH, 1921.

BEGG v. EDWARDS.

Contract—Agency for Sale of Spirits—Personal Services—Mistake as to Person with whom Contract Made—Action upon Bills of Exchange—Counterclaim for Overpayments Made or Damages for Breach of Contract—Amendment.

Action to recover the aggregate amount of three bills of exchange drawn by the plaintiffs on the defendants; and counterclaim by the defendants for \$44,649.38 for overpayments made by them to the plaintiffs, or, in the alternative, for \$40,000 damages for breach of contract.

The action was tried without a jury at a Toronto sittings. J. A. Worrell, K.C., and P. W. Beatty, for the plaintiffs. Gideon Grant and G. W. Adams, for the defendants.

LATCHFORD, J., in a written judgment, said that there was no defence to the plaintiffs' claim, and they were entitled to judgment for \$7,806.65.

In answer to the counterclaim the plaintiffs denied that there had been any overpayment or breach.

The plaintiffs were distillers, carrying on business in Scotland, with agencies in various parts of the world.

"F. Edwards & Company" was, on the 15th May, 1908, registered, pursuant to the Partnership Registration Act, R.S.O. 1897 ch. 152, sec. 9, as having carried on trade in wines and spirits in the city of Toronto since the 1st May, 1908; Laura Ellen Edwards, described as a married woman, declared that she was the sole member of the partnership firm.

For 3 or 4 years before 1912, F. Edwards & Co. acted as agents for the plaintiffs in Toronto. They sold brands of whisky other than those supplied by the plaintiffs. In April, 1912, when Frederick Edwards, the husband of Laura Ellen Edwards, was in England, he was asked by the plaintiffs to discontinue selling other whiskies and to act as sales-agent and distributor of none but the plaintiffs' product. The plaintiffs assumed that Edwards, and not his wife, constituted the firm of F. Edwards & Co. The plaintiffs were not aware until after the present action began that the sole partner was not Frederick Edwards.

Frederick Edwards acceded to the plaintiffs' request, and on the 18th April, 1912, entered into a formal contract with the plaintiffs, in writing and under seal, whereby the plaintiffs