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APPELLATE DIVISION.

FIRST DIVISIONAL COURT. APRIL 16TH, 1918.

*SIERICHS v. HUGHES.

Contract—Sale of Flour—Failure to Deliver Full Quantity—Weekly Deliveries—Delivery "as Required"—Necessity for Demand—Agreement to Postpone Time for Delivery—Statute of Frauds—Construction of Contract—Loss of Right to Require Delivery—Abandonment—Inference from Silence.

Appeal by the defendant from the judgment of KELLY, J., 13 O.W.N. 10.

The appeal was heard by MACLAREN and HODGINS, JJ.A., LATCHFORD and SUTHERLAND, JJ., and FERGUSON, J.A.

W. N. Tilley, K.C., for the appellant.

W. B. Northrup, K.C., for the plaintiff, respondent.

FERGUSON, J.A., in a written judgment, said that the plaintiff's claim was for damages for breach of contract arising out of a written agreement between him and the defendant for the purchase and sale of flour. The plaintiff was a baker, and the defendant a flour and feed merchant, both carrying on business in Belleville, Ontario. The contract read: "Bought of L. P. Hughes, Dealer in Flour and Feed etc. Terms Cash. Belleville, October 14, 1915. Mr. J. F. Sierichs. 1,560 bags H. Queen $2.45. Delivery as required—30 bags week is to be taken out by November 1st, 1916." The writing was signed by both parties.

Although the plaintiff was entitled to ask for and receive 1,560

* This case and all others so marked to be reported in the Ontario Law Reports.