

MIDDLETON, J.

JUNE 8TH, 1915.

JESS v. CITY OF HAMILTON.

Evidence—Action for Money Due under Contract with Municipal Corporation—False Receipts—Fraudulent Conspiracy—Onus—Weight of Evidence—Testimony of Accomplices—Corroboration—Finding of Fact of Trial Judge.

The plaintiff sued for a balance of money alleged to be due for sand and gravel supplied by him to the defendant corporation during the year 1914, under a contract dated the 24th March, 1914.

The contract was not disputed, and the defendant corporation's books shewed a balance of \$5,315.75 due to the plaintiff, upon accounts rendered and audited, in respect of sand and gravel delivered in 1914.

There was a similar contract between the parties for the year 1913, and upon that contract a large quantity of sand and gravel had been delivered, the price totalling \$62,512.30. The defence to the action was based upon things that happened in 1913, as well as in 1914:—

(1) It was alleged that during 1913 the plaintiff fraudulently and corruptly conspired with civic officers to have issued to him false receipts for the delivery of gravel. The evidence as to this related to about 50 loads, worth \$300.

(2) That, during 1913 and 1914, the loads delivered did not contain two cubic yards—there was a shortage of 5 per cent.

(3) That, during both years, the waggons, even when loaded to capacity and of sufficient capacity, while they contained the requisite two cubic yards at the point of loading, were short 12 per cent. upon delivery, because the loads settled during transit.

The action was tried without a jury at Hamilton.

G. Lynch-Staunton, K.C., C. W. Bell, and W. L. Ross, for the plaintiff.

M. K. Cowan, K.C., and F. R. Waddell, K.C., for the defendant corporation.

MIDDLETON, J., dealing with the facts, said that all the evidence against the plaintiff consisted of the statements of two men who had been in the employ of the defendant corporation as foremen upon the works. One of these men, Mason, stated that