

Rule 608, in an action to recover \$116.51 for cement sold and delivered, and appeal by defendants from an order of MACMAHON, J., in Chambers, removing stay of execution consequent upon appeal.

J. Bicknell, K.C., for defendants, contended that Rule 608 could not be applied in a case of this kind, citing *Leslie v. Poulton*, 15 P. R. 322; *Molsons Bank v. Cooper*, 16 P. R. at p. 202; *Lake of the Woods Milling Co. v. Apps*, 17 P. R. 496.

O. A. Langley, Lakefield, for plaintiffs, contra.

THE COURT (MULOCK, C.J., ANGLIN, J., CLUTE, J.), held that the fact that the effect of delay would defeat plaintiffs' claim was sufficient to warrant a summary judgment in a case where the debt was due, approving *Kinloch v. Morton*, 9 P. R. 38, and that the judgment could be set aside only on payment into Court of the amount for which judgment was entered.

If the money is paid in within a week, costs of appeal and of motion before MACMAHON, J., reserved until after the trial. In default of payment in, appeal to be dismissed with costs.

BOYD, C.

SEPTEMBER 19TH, 1906.

CHAMBERS.

REX v. FERGUSON.

*Police Magistrate—Charge under Ontario Factories Act—
Discharge of Accused—Application for Stated Case—Time
for Making.*

Motion by the Attorney-General for Ontario for an order requiring the police magistrate for the city of St. Thomas to state a case for the consideration of the High Court.

J. R. Cartwright, K.C., for the Attorney-General.

J. B. Davidson, St. Thomas, for the defendant.

BOYD, C.:—The defendant, being charged with a breach of duty under the Ontario Factories Act, was, after hearing