

HIGH COURT OF JUSTICE.

Single Court, Boyd, C.] SMITH v. MASON. [March 26.

Evidence—Opinion—"Honestly and reasonably"—Liability of trustees.

The provisions of 62 Vict. (2) c. 15, s. 1, relieving trustees from the consequences of technical breaches of trust who have acted "honestly and reasonably" does not render competent as evidence the opinions of bankers or other financial men as to whether the trustee has so acted in the course he has taken or omitted to take. The general rule of evidence still applies that mere personal belief or opinion is not evidence, and that the test of reasonableness is that exhibited by the ordinary business men or the man of ordinary sense, knowledge and prudence in the conduct of his own affairs.

The nearest approach to a working rule is that in order to exercise a fair judgment with regard to the conduct of trustees at a particular time we must place ourselves in the position they occupied at that time and determine for ourselves what, having regard to the opinion prevalent at that time in the neighbourhood and concurrent with the transaction would have been considered the prudent course for them to have adopted. This is a different thing to asking the opinion of witnesses as to what would have been done, or what would have happened under stated circumstances several years ago, as was sought in this case.

H. D. Gamble, for the motion. *S. H. Blake*, K.C., and *J. H. Moss*, contra.

Boyd, C., Robertson, J.] [April 2.

IN RE RATCLIFFE v. CRESCENT HILL TIMBER CO.

Mandamus—Division Court—Jurisdiction—Evidence—Nonsuit—Appeal—Termination of action.

Appeal by the plaintiff from an order of LOUNT, J., in Chambers, dismissing a motion by the plaintiff for a mandamus to the Judge presiding in a Division Court to compel him to try an action in such Court, which he dismissed because, in his opinion, the amount involved was beyond the jurisdiction of a Division Court. The plaintiff claimed £212 for wages, and gave credit for a large sum thereon, suing for a balance of \$58. The defendant, by counterclaim, alleged a large account of \$744.58 (of which the £212 for wages was only an item), and claimed a balance in his favour of more than \$100. The Judge entered a nonsuit after hearing the evidence of one witness who disclosed the nature of the account.

W. H. Bartram, for plaintiff, relied on *Stanley Piano Co. v. Thomson*, 32 O.R. 341. *J. B. McKillop*, for defendants, contended that mandamus