

by SIR CHARLES FITZPATRICK, C.J., and DAVIES, IDINGTON, DUFF, ANGLIN and BRODEUR, JJ.

G. H. Watson, K.C., for the appellants.

W. N. Tilley and T. R. Allen, for the respondent.

THEIR LORDSHIPS dismissed the appeal with costs.

DECEMBER 22ND, 1911.

DOMINION LINEN MFG. CO. v. LANGLEY.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

S. C. R.

Insolvent Company—Sale of Assets by Liquidator—Sale “Free From Incumbrances”—Conversion—Breach of Contract.

Appeal from a decision of the Court of Appeal for Ontario, 19 O. W. R. 648, reversing the judgment at the trial, 14 O. W. R. 1163, in favour of the plaintiffs (appellants).

The defendant, Langley, is liquidator of the Dominion Linen Mills, Ltd., which by an order of the High Court of Justice in January, 1906, was declared to be insolvent and liable to be wound up. Some time before the making of this order the company had hypothecated its principal assets, including its stock of manufactured linens to the Crown Bank of Canada, to secure advances, and the bank had taken possession. By order of Court the business was allowed to be carried as a going concern by the liquidator, and advances to be procured from the bank for wages, etc., to be repaid out of the first moneys coming into his hands. While so carrying it on he advertised for tenders for purchase of the assets, and in April, 1906, an agreement was entered into between the defendant and one Todd, by which the latter became purchaser of the property of the company “free from incumbrances” and transferred the same shortly after to the plaintiffs, a new company formed to take over the business. The defendant received \$5,800 on account of the purchase money and, by direction of the plaintiffs, and on their undertaking to hold him harmless, paid it over to the Crown Bank.