

as to material and workmanship, and if, to accomplish this, he improperly made use of a genuine label, I would hold him answerable, but nothing of the kind was proved, nor can be inferred from the evidence: see *Clark Thread Co. v. Armitage*, 67 Fed. R. 896. I find that the allegations of plaintiff are not sustained by the evidence; that there was once a Journeymen Tailors' Union of Canada, which had a label, although not registered as a trade mark; and that there is no evidence that defendant had knowledge that the local union at St. Thomas had ceased to exist, if, in fact, it did cease. Action dismissed with costs.

Carscallen & Cahill, Hamilton, solicitors for plaintiff.

H. H. Bicknell, Hamilton, solicitor for defendant.

FEBRUARY 1ST, 1902.

DIVISIONAL COURT.

RE YOCOM, HONSINGER v. HOPKINS.

Administration — Insolvent Estate—Creditors—Conduct of Proceedings—Discretion of Court, etc.—Rule 954.

Re Squire, 21 Ch. D. 647, referred to.

Where a creditor had been appointed administrator of an insolvent estate, and had realized \$1,045 for the personalty; and it was shewn that the real estate was not worth the amount of the mortgages against it, and that the claims sent by creditors amounted to \$3,450, of which \$1,915.45 was claimed by a surety for the mortgage debt, as the amount of his probable loss, LOUNT, J., in the exercise of his discretion, under Rule 954, refused an administration order, because a sale of the mortgaged land was pending, and the result would so largely diminish the difficulty of winding up the estate.

On appeal.

W. J. Treemear, for the plaintiff.

F. E. Hodgins, for defendant.

A Divisional Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.)

Held, that, as the plaintiff and the surety were entitled to litigate; as administration would settle these and all other questions at less expense; and as the mortgage sale had in the meantime proved abortive, and thus not decreased the difficulty of winding up the estate; that an administration order should be made, but without costs of