

A. McLean Macdonell, K.C., for the defendant.

E. D. Armour, K.C., for the plaintiff.

HON. MR. JUSTICE BRITTON, dismissed the appeal with costs.

SUPREME COURT OF ONTARIO.

2ND APPELLATE DIVISION.

MAY 28TH, 1913.

NATIONAL TRUST CO. v. BRANTFORD STREET
Rv. CO.

4 O. W. N. 1341.

Mortgage—Security for Bonds of Railway Company — Interest in Arrear — Acceleration of Payment of Principal—Action for Principal and Interest—Claim for Foreclosure and Possession—Payment of Interest Pendente Lite—Right to Possession—Receiver—Breaches of Covenants—Default in Payment of Taxes—10 Edw. VII. c. 51, s. 6—Costs.

KELLY, J., 22 O. W. R. 839, 3 O. W. N. 1615, dismissed with costs the action of plaintiffs, trustees for certain bondholders, claiming the appointment of a receiver of the properties of defendant railway company on account of breach of certain covenants in the bond mortgage contained, holding that as the appointment of a receiver was not a remedy given plaintiffs by the terms of their mortgage, their only remedy was by action on the covenants.

SUP. CT. ONT. (2nd App. Div.) set aside above judgment and directed a new trial. Costs of former trial and of this appeal to be in the discretion of the Judge of the new trial.

An appeal by the plaintiffs from the judgment of HON. MR. JUSTICE KELLY, 22 O. W. R. 839.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J.EX., HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH.

J. A. Paterson, K.C., for the plaintiffs.

S. C. Smoke, K.C., for the defendants.

THEIR LORDSHIPS set aside the judgment dismissing the action, and directed a new trial. Costs of the former trial and of this appeal to be in the discretion of the Judge at the new trial.