

pendency of the appeal. The defendant Love had paid into Court, \$200 as security for the costs of the appeal.

W. E. Middleton, for plaintiffs.

C. W. Kerr, for defendant Hill.

W. E. Raney, for defendant Love.

MACLENNAN, J.A., held, after some hesitation, and with some reluctance, that the plaintiffs were entitled to leave to issue execution. They had a judgment for \$2,500 for goods, of which the defendants had received the benefit. They were dealing with the defendants on terms of security for their account, and the security had turned out to be wholly illusory. The financial position of defendants was now found to be weak, one of them having given up business for that reason, and the other having been obliged to borrow two considerable sums upon mortgage of his stock in trade to enable him to carry on his business. Under these circumstances, the case was one for the exercise of the power given by Rule 827 (2) of ordering that execution be not stayed pending the appeal. The appellants might, however, have the execution stayed upon giving security, to the satisfaction of a Judge, for the judgment debt and costs. Costs of motion to be costs in the appeal.

ROBERTSON, J.

MAY 15TH, 1902.

CHAMBERS.

McLAUGHLIN v. McLAUGHLIN.

Costs—Partition Proceeding—Taxed Costs—Special Circumstances.

An application by the plaintiffs for an order allowing taxed costs instead of the usual commission in a summary proceeding for partition or sale of land, upon the ground that an unusual amount of time and trouble had necessarily been expended by the plaintiffs' solicitor in the proceedings.

J. G. O'Donoghue, for plaintiffs.

F. W. Harcourt, for infant defendants.

E. J. B. Duncan, for adult defendants.

ROBERTSON, J.—I have carefully considered this matter, and, in my judgment, it is an exceptional case, and the plaintiffs' solicitor should be allowed his costs according to the tariff, instead of commission under Rule 146.