

OSLER, J. A.

FEBRUARY 17th, 1902.

C. A. CHAMBERS.

Re WATTS.

Criminal Law—Extradition—Habeas Corpus—Appeal—Single Judge of Court of Appeal—Jurisdiction as to Bail—Discretion—R. S. O. ch. 83—Judicature Act, sec. 54.

Motion on behalf of prisoner to admit him to bail pending an appeal from order of Street, J., (ante p. 129), upon return of a writ of habeas corpus, remanding him to custody for extradition. Pending the proceedings below, Britton, J., admitted, on consent, the prisoner to bail, on condition that in the event of his being remanded for extradition he would forthwith surrender himself to the keeper of the gaol at Windsor.

F. A. Anglin, for Watts.

G. F. Shepley, K.C., for complainant.

OSLER, J.A.:—An order should not be made, for it does not appear that the prisoner is in actual custody, and it is doubtful whether a Judge of the Court of Appeal has power, on an appeal to the Court of Appeal under R. S. O. ch. 83, to admit to bail, such a matter not being incidented to the appeal, and so capable of being dealt with by a single Judge under sec. 54 of the Judicature Act. Moreover, if it rested in discretion to grant bail, one would be slow to admit to bail a person who has been committed for extradition, but upon the power of the full Court to do so, I do not for a moment reflect.*

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DIVISIONAL COURT.

WILLIAMS v. COOK.

Sale of Goods—Contract—Failure to Supply Goods Contracted for—Breach—Guaranty—Remedy—Division Court Action—Bar after Judgment but not after Settlement before Trial.

Appeal by defendant from judgment of MACMAHON, J. Action to recover damages for breach of contract to deliver two dynamos, the breach alleged being that they were second hand and inferior in quality to those contracted for, and for other breaches. Defendant denied the breach, and alleged that plaintiff had bought the dynamos with a guarantee, which had been complied with, and that plaintiff had brought an

* On February 19th, the pending appeal came on for hearing before the full Court, which expressed a doubt as to the jurisdiction to admit to bail in extradition cases, and refused to hear the appeal until the condition of the bail bond had been complied with, and the appellant was shewn to be in close custody.—Ed.