

All the circumstances made the case one for the trial Court. It cannot be said that there was no evidence upon which that Court could rightly convict.

The like considerations apply to the case of *Rex v. McSweeney*. The question whether there was any evidence upon which the defendant might legally be convicted, should, in my opinion, be answered in the affirmative.

MOSS, C.J.O., IN CHAMBERS.

APRIL 25TH, 1910.

MCCARTHY & SONS CO. v. W. C. MCCARTHY.

*Appeal—Court of Appeal—Security for Costs—Con. Rule 826—Dispensing with Security—Property of Appellant in Hands of Respondents—Uncertainty.*

Motion by the defendant for an order dispensing with the giving of security for costs of an appeal to the Court of Appeal from the order of a Divisional Court, ante 500, or reducing the amount of the security to be given.

Featherston Aylesworth, for the defendant.

Grayson Smith, for the plaintiffs.

Moss, C.J.O.:—An appellant applying for an order dispensing with the giving of security for costs under Rule 826, or reducing the amount of the security to be given, must make out a case beyond reasonable doubt. The onus is upon him, and the matter should not be left in uncertainty. The ground presented in this case is that the plaintiffs have in their hands or under their control, by means of a receiving order, property or means of the defendant sufficient to answer their costs of the appeal, and which would, in the event of the appeal failing, be available for that purpose.

But I am not satisfied as to this upon the material before me. There is a conflict as to the value of the 63 shares and as to the extent of the charges against them and the policies of life assurance, as well as to the full amount of the claims against the defendant in respect of which they may be made exigible.

The matter is left in too much uncertainty to justify a departure from the general rule: *Re Sherlock*, 18 P. R. 6; *Thuresson v. Thuresson*, ib. 414.

The motion must be refused; but, having regard to all the circumstances, the costs may be in the proposed appeal.