

The question on the appeal was whether the appellant was liable, her co-defendant being undoubtedly liable, and judgment having been recovered against him.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

F. E. O'Flynn, for the appellant.

E. G. Porter, K.C., for the plaintiff, respondent.

MEREDITH, C.J.C.P., read a judgment in which he said that the appellant's husband bought the apples from the plaintiff, as the trial Judge found. As to the appellant's share in the transaction, the plaintiff's story, given effect to, with some doubt, by the trial Judge, was, that she (the plaintiff) was unwilling to deliver the last 293 barrels of the apples under her contract with Alyea until she was paid the amount that would be then due to her from him, and that the appellant promised (not in writing) to pay the amount; and, on getting this oral guaranty, the plaintiff delivered the apples to the husband. Two witnesses called by the plaintiff testified that the appellant "guaranteed" payment.

It was quite obvious that the appellant's promise could have been only to pay the debt of another, and, not being in writing, could not be enforced in this action.

The appeal should be allowed with costs, and the action, as against the appellant, dismissed with costs.

LENNOX, J., concurred.

RIDDELL, J., read a judgment in which he said that this case was wholly covered by *Beard v. Hardy* (1901), 17 Times L.R. 633, and like cases. He referred also to *Chater v. Beckett* (1797), 7 T.R. 201, *Young v. Milne* (1910), 20 O.L.R. 366, and other cases; and quoted from the judgment of Vaughan Williams, L.J., in *Davys v. Buswell*, [1913] 2 K.B. 47, 53, 54, this passage: "The question whether each particular case comes within . . . the statute or not depends . . . on the fact of the original party remaining liable, coupled with the absence of any liability on the part of the defendant or his property, except such as arises from his express promise."

While there was an agreement between the plaintiff and the appellant, it was not binding on the appellant without a writing to satisfy the Statute of Frauds.

MASTEN, J., concurred.

*Appeal allowed.*