

port of this contention *Laidlaw v. O'Connor*, 23 O.R. 696, was cited; but what was said by *Armour, C.J.*, in that case, makes against it. The learned Chief Justice, p. 698, quotes from note (a) to *Hill v. Finney* (1865), 4 F. & F. 616, at p. 635. . . . To the same effect is what was said by the Master of the Rolls in *Sachs v. Henderson*, [1902] 1 K.B. 613, 616.

In *Steljes v. Ingram* (1903), 19 Times L.R. 534, *Phillimore, J.*, reviewed the authorities and decided that an action against an architect to recover damages for not using due care and skill in supervising the erection of an house which the architect had undertaken to supervise, was an action founded on contract.

In the case at bar, the respondent was acting for the appellant in completing a purchase of land in another Province, and was intrusted by him with a cheque for the amount of the purchase-money, with instructions not to pay it over until the taxes on the land were paid. The respondent did not follow these instructions, and the appellant was subsequently compelled to pay them to save his land, which had been sold for the taxes.

It appears to us that the action is, therefore, for the direct breach of a positive contract to do a specific act, and not for breach of a general duty arising out of the retainer to bring sufficient care and skill to the performance of the contract, and, being so, was within the proper competency of the Division Court.

There is a cross-appeal by the defendant, and it was abandoned on the argument.

Both appeals will be dismissed, and there will be no costs of them to either party.

OCTOBER 8TH, 1913.

*REX v. RUSSILL.

Criminal Law—Offence against Inland Revenue Act, sec. 372—Selling Wood Alcohol without "Poison" Label—Act of Servant—Conviction of Master—Mens Rea—Exceptions to General Rule.

Case stated by one of the Police Magistrates for the City of Toronto, at the instance of the Crown.

*To be reported in the Ontario Law Reports.