

of accidents the chattel mortgage was not renewed. The defendants took possession of the mortgaged property, ran the newspaper for a time, and at last sold it, in April, 1907. The proceeds were not sufficient to pay in full those who had advanced the mortgage money; and the plaintiffs sued the defendants for the amount lost to them; the other two participants in the loan not being parties.

At the trial judgment was given for the plaintiffs for \$250 each.

The appeal was on two grounds: (1) that the defendants failed to renew the chattel mortgage; and (2) that the defendants omitted to sell until after the lapse of an unreasonable time.

The appeal was heard by FALCONBRIDGE, C.J., BRITTON and RIDDELL, JJ.

J. W. Bain, K.C., and M. Lockhart Gordon, for the defendants.

D. B. MacLennan, K.C., for the plaintiffs.

RIDDELL J.:—Assuming that it was the duty of the defendants to renew the chattel mortgage in accordance with the statute, and assuming further that the omission to renew in the present instance cannot be excused, it is impossible, as I think, to hold that such negligence resulted in any loss. . . .

The second ground of complaint is put in this way: The defendants were trustees for the plaintiffs; it was their duty to make the most of the security; they could have made more had they sold at once; they not only sold for less, but they incurred an expense more than though they had sold without delay; this occasioned a loss to each of the plaintiffs.

The test applied by the trial Judge is at least as stringent as the plaintiffs can ask for. Did the defendants "act as an ordinarily prudent man would have done in regard to his own business," or were they "careless in dealing with the property which they had as security for the moneys given them by the plaintiffs and others?" (See judgment of the trial Judge, notes of evidence, pp. 124, 125.) I shall for the present purpose adopt it as giving the plaintiffs certainly all they can claim. It consequently becomes a question of fact so far as we have gone. It need not be said that the Court will not interfere with the findings of fact by a trial Judge except in a very clear case; but at the same time "the Court appealed to does not and cannot abdicate its right and its duty to consider the evidence . . . If the evidence which has been believed by him, when fairly read