

The  
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HIGH COURT DIVISION.

SUTHERLAND, J., IN CHAMBERS.

JULY 11TH, 1917.

DOUBLEDEE v. DOMINION SECURITIES  
CORPORATION LIMITED.

*Judgment—Summary Judgment—Rule 57—Action on Bond—  
Suggested Defence—Tender of Bond before Action a Condition  
Precedent.*

Appeal by the defendants from an order of the Master in Chambers, upon a motion under Rule 57, allowing the plaintiffs to sign judgment for the amount claimed by the special endorsement on the writ of summons.

H. H. Davis, for the defendants.

W. Proudfoot, K.C., for the plaintiffs.

SUTHERLAND, J., in a written judgment, said that the action was brought by the executors of the will of Frederick Doubledee, deceased, to recover \$1,000, the amount which the defendants, by a bond issued by them on the 14th June, 1913, promised to pay to the deceased, and interest. The defence suggested was, that the plaintiffs had not, before action, tendered to the defendants, for payment, the bond sued upon, and had no right of action.

The learned Judge said that the cases cited for the defendants—Ward v. Plumbley (1889), 6 Times L.R. 198; Jacobs v. Booth's Distillery Co. (1901), 85 L.T.R. 262; and Fell v. Williams (1883), 3 C.L.T. 358—had no real application. It was obvious from the affidavit and the examination of the defendants' secretary that they had no defence. It was apparent that the defence was a mere afterthought, put forward not because the defendants wished to take due precaution before payment, but because they desired to defer payment. Presentation of the bond was not necessary in view of its terms and of the position taken by the defendants in their letters before action.

*Appeal dismissed with costs.*