

being able to secure a similar arrangement elsewhere, and she would probably be compelled to place the infant in the charge of some public institution.

On the other hand, the arrangement under which the infant had lived with the respondents for the past year, promised to secure it a permanent home and a good upbringing.

Having regard to the circumstances last mentioned, the legal right of the applicant as the mother of the child, which had been fully considered and duly appreciated, must yield to the rule that the best interest of the infant is the first consideration for the Court. That principle may not prevail in all cases, but where, as here, the ability of the mother to support the child and give it a home is at least doubtful, a basis is afforded for the Court to deal with the question on the footing of what is likely to be best for the welfare of the infant.

Reference to *Re Gefrasso* (1916), 10 O.W.N. 65, 166, 36 O.L.R. 630; *Re Clarke* (1916), 10 O.W.N. 110, 36 O.L.R. 498; *Re Longaker* (1908-9), 12 O.W.R. 1193, 14 O.W.R. 321; *Re D Andrea* (1916), 10 O.W.N. 195, 37 O.L.R. 30.

Application refused; no costs.

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CANADIAN HOOD-HAGGIE CO v. SAMWELL—KELLY, J.—JAN. 30.

*Contract—Sale of Goods—Non-delivery—Breach—Counterclaim—Findings of Fact of Trial Judge.*—Action for damages for breach of the defendant's agreement to deliver a large quantity of nails to the plaintiffs. Counterclaim for damages for non-delivery by the plaintiffs of a quantity of rope under another contract. The action and counterclaim were tried without a jury at Peterborough. KELLY, J., in a written judgment, dealt with the facts appearing in evidence in relation to both claim and counterclaim, and gave judgment in the plaintiffs' favour on both branches, with costs. J. A. Macintosh and J. F. Strickland, for the plaintiffs. W. F. Nickle, K.C., and J. M. Farrell, for the defendant.