

HIGH COURT DIVISION.

RIDDELL, J.

DECEMBER 22ND, 1919.

*RE LANGDON.

Trusts and Trustees—Moneys Held by Solicitors in Trust for Creditors of Trader—Summary Application for Order Declaring Trusts and Giving Directions as to Distribution—Oral Trust—Non-existence of Instrument to be Construed—Rules 233, 600, 604—Dismissal of Application.

An application, upon originating notice, by a firm of solicitors, having in their hands a sum of money, for an order declaring the trusts upon which they held the money and directing the disposition of it.

The motion was heard in the Ottawa Weekly Court.

G. D. Kelley, for the solicitors.

A. C. Craig, for Langdon.

T. A. Beament, for the assignee of Langdon.

RIDDELL, J., in a written judgment, said that L. was carrying on a restaurant business in Ottawa, and became involved in debt: F., one of his creditors, sued, and in September, 1919, obtained judgment for a considerable sum; after action brought, F., with B., another large creditor of L., interviewed L., and B. informed L. that he would have a seizure made by the Sheriff unless a substantial payment should be made on account. L. requested that no seizure should be made, as he had made a sale of his business, and he would divide the proceeds amongst his creditors—the two creditors thereupon agreed to allow the sale to go through without interference from them.

The firm of solicitors, the applicants herein, were acting for creditors to a large amount; they issued three specially endorsed writs of summons, and were proceeding in the actions, when an arrangement was made. L. had been endeavouring to sell his business, and finally obtained a purchaser. The solicitors for the purchaser considered that the Ontario Bulk Sales Act, 1917, 7 Geo. V. ch. 33, applied, and the applicants pressed the point, and in the interest of their clients insisted that no sale should be made unless the provisions of the Act were complied with. L. made a statutory declaration with what he considered a true and correct account of the names, etc., of his creditors, etc., and it was agreed by the solicitors acting for the purchaser and the applicants that the purchase-money should be paid over to the applicants "in