

or taxes. Admittedly he has no defence to this action, and he is insolvent.

We think the case comes within the authorities under Con. Rule 608, shewing that injury and injustice would result to the plaintiffs unless they are granted immediate relief. There are special circumstances entitling the plaintiffs to the application of the Rule; and we think the appeal should be dismissed with costs.

SUPREME COURT OF ONTARIO.

2ND APPELLATE DIVISION.

MAY 1ST, 1913.

MAPLE LEAF PORTLAND CEMENT CO. v. OWEN
SOUND IRON WORKS CO.

4. O. W. N. 1189.

*Evidence—Estoppel—Passivity—Contract for Sale of Machinery—
Repudiation of Agent by Principal—Laches.*

KELLY, J., *held*, 23 O. W. R. 907; 4 O. W. N. 721, that defendants were precluded from denying their liability upon a contract for sale by them of certain machinery, or that one Moyer had been their agent in the making thereof, where they had received acceptances from plaintiffs of the proposal to sell bearing on their face a statement that they were subject to confirmation by defendants, had held plaintiffs' note payable to their order, and had twice drawn on plaintiffs in respect thereof, and where the whole correspondence between the parties shewed that plaintiffs thought they were dealing with defendants, and defendants had never repudiated the idea until the machinery sold proved worthless.

Keen v. Priest, 1 F. & F. 314; *Wiedmann v. Walpole* [1891] 2 Q. B. 534, referred to.

SUP. CT. ONT. (2nd App. Div.) affirmed above judgment.

(See, also, *Meikle v. McRae*, 20 O. W. R. 308, at p. 310.—Ed.)

An appeal by the defendants from a judgment of HON. MR. JUSTICE KELLY, 23 O. W. R. 907.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J.EX., HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH.

R. McKay, K.C., for the defendants.

W. G. Thurston, K.C., for the plaintiffs.

THEIR LORDSHIPS (V.V.), dismissed the appeal with costs.