

THE ONTARIO WEEKLY NOTES

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No. 8

APPELLATE DIVISION.

APRIL 16TH, 1914.

MAHER v. ROBERTS.

Appeal—Motion to Quash—Action Brought in Name of Assignee for Benefit of Creditors—Order of County Court Judge Authorising Creditor to Proceed with Appeal in Name of Assignee—Assignments and Preferences Act, R.S.O. 1914 ch. 134, sec. 12(2)—Jurisdiction of Judge—Proceedings to Found Jurisdiction not Taken—Adjournment of Motion to Enable Creditor to Take Proceedings—Costs.

Motion by the defendant to quash the plaintiff's appeal from the judgment of LENNOX, J., 5 O.W.N. 603, upon the ground stated below.

The motion was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, SUTHERLAND, and LEITCH, JJ.

E. E. A. DuVernet, K.C., and W. F. Kerr, for the defendant.
F. M. Field, K.C., for the plaintiff.

At the conclusion of the argument the judgment of the Court was delivered by MULOCK, C.J.Ex.:—This is an action brought by the plaintiff, as assignee of the estate of one Morley, who made an assignment under the Assignments and Preferences Act, to set aside a mortgage said to have been fraudulently made by the debtor. The trial Judge dismissed the action, and this appeal is from his judgment.

The appeal is nominally in the name of the assignee, but counsel for the appellant is met at the threshold with an objection taken by the defendant's counsel, that he has no retainer to