

MACLAREN, J.A.

JUNE 8TH, 1903.

C.A.—CHAMBERS.

CRAIG v. SHAW.

Court of Appeal—Leave to Appeal—Special Reasons—Sale of Goods—Action for Price—Place of Delivery—Inspection—Defect in Quality.

Motion by defendants for leave to appeal from order of a Divisional Court, ante 449, affirming judgment of trial Judge.

F. E. Hodgins, K.C., for applicants.

R. J. McLaughlin, K.C., for plaintiffs.

MACLAREN, J.A., held that there were not sufficient special reasons for treating the case as exceptional and granting leave to appeal. Motion dismissed with costs.

JUNE 9TH, 1903.

DIVISIONAL COURT.

KELLY v. WILSON.

Chose in Action — Assignment of — Order for Payment of Money — Equitable Assignment of Fund—Existence of Fund—Finding of Fact.

Appeal by defendant Wilson from judgment of FALCONBRIDGE, C.J., in favour of plaintiff in action to recover \$310, the amount of an order given to plaintiff by defendant Aldous upon defendant Wilson, as follows: "Pay to Edward Kelly the sum of \$310 and charge same against sale of stock and business as arranged between us."

D. L. McCarthy, for defendant.

A. Weir, Sarnia, for plaintiff.

The judgment of the Court (BOYD, C., FERGUSON, J., MACMAHON, J.) was delivered by

BOYD, C.—It is conceded that the order to pay is in terms a good equitable assignment of the fund, if there was an existing fund out of which it was to come. That being so in law, I think the finding of the Chief Justice on the facts, with his estimate of the witnesses, is one that ought not to be disturbed. Affirming the judgment on the facts, that on the law follows.

Appeal dismissed with costs.