

SUPREME COURT OF ONTARIO.

2ND APPELLATE DIVISION.

MAY 14TH, 1913.

HAYES & LAILEY v. ROBINSON.

4 O. W. N. 1280.

Judgment—Summary—Con. Rule. 608 — Application of—Special Circumstances—Claim on Overdue Promissory Notes.

Action by wholesale merchants against a retail merchant to recover upon nine promissory notes overdue and unpaid. Defendant had been selling goods without replacing them or accounting for the proceeds, nor had he insured the goods or paid his rent or taxes.

SUP. CT. ONT. (2nd App. Div.) *held*, that there was no defence to the action, that defendant was insolvent and the case came under Con. Rule. 608. That injury and injustice would result to plaintiffs unless they were granted immediate relief.

Appeal by the defendant from a summary judgment granted by HON. MR. JUSTICE LATCHFORD, on the 8th May, 1913, upon an application in the Weekly Court at Toronto, under Con. Rule 608.

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. G. Smythe, for the defendant.

A. T. Davidson, for the plaintiffs.

The following authorities were referred to: *Kinloch v. Morton*, 9 P. R. 38; *Francis v. Francis*, 9 P. R. 209; *Greene v. Wright*, 12 P. R. 426; *Leslie v. Poulton*, 15 P. R. 332; *Molsons Bank v. Cooper*, 16 P. R. 195; *Lake of the Woods Milling Co. v. Apps*, 17 P. R. 496.

THEIR LORDSHIPS' judgment was delivered by

HON. SIR WM. MULOCK, C.J.Ex. (V.V.):—The affidavits shew that the notes made by the defendant are overdue and unpaid; that many demands for payment have been made, but none complied with. The defendant has been selling goods without replacing them or accounting for the proceeds. Nor has the defendant insured the goods or paid his rent