

desired to get to his home as soon as possible—just because he desired to be there.

The appeal should be allowed with costs and the action dismissed with costs.

RIDDELL, J., gave reasons in writing for the same conclusion. He referred to Neill v. Travellers' Insurance Co. (1885), 12 S.C.R. 55; Canadian Railway Accident Insurance Co. v. McNevin (1902), 32 S.C.R. 194; the Cornish case, supra; Cook v. Grand Trunk R.W. Co. (1914), 31 O.L.R. 183; Lovell v. Accident Insurance Co. (1874), 3 Ins. L.J. 877; 1 Cyc. 259; Am. & Eng. Encyc. of Law, vol. 1, p. 284 et seq.

LENNOX, J., agreed in the Chief Justice's judgment.

MASTEN, J., agreed in the result.

*Appeal allowed.*

SECOND DIVISIONAL COURT.

FEBRUARY 18TH, 1916.

\*K. and S. AUTO TIRE CO. LIMITED v. RUTHERFORD.

*Guaranty—Indefinite Basis of Contract—Increase in Liability—Release of Guarantor—Construction and Scope of Contract.*

Appeal by the defendant from the judgment of HODGINS, J.A., ante 214, 34 O.L.R. 639.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

George Wilkie, for the appellant.

Leighton McCarthy, K.C., for the plaintiffs, respondents.

LENNOX, J., delivering judgment, said that the argument of the appeal was practically confined to two points: (a) Was the defendant released from liability under his agreement with the plaintiffs of the 7th February, 1914, by the circumstance that a new company was not formed, as contemplated, and the transaction of the 10th February, by which, amongst other things, McLaren was appointed the sole agent of the plaintiffs in the Province of Quebec? (b) What is the effect of the defendant's letter to the plaintiffs of the 27th February, 1914? It was strenuously argued that, owing to changed circumstances, the guaranty agreement of the 7th February never went into effect, or, if it did, that the defendant was released when the plaintiffs,