

allowing plaintiffs to enter summary judgment under Rule 603, in an action by mortgagees to recover possession of mortgaged premises. The defendants were husband and wife. The mortgaged premises were the property of the wife. She set up by affidavit the defence that the mortgage was obtained from her by plaintiffs as security for a debt of her husband, by means of statements made by officers of plaintiffs, that the taking of the mortgage was a mere formality and she would not be liable upon it, and that the property of the husband would be sufficient to answer his debt.

W. E. Middleton, for defendants.

A. Cohen, for plaintiffs.

THE COURT (MEREDITH, C.J., MACMAHON, J., MAGEE, J.), held, following the decision of the House of Lords in *Jacob v. Booth's Distillery Co.*, 85 L. T. 262, that this was a case in which unconditional leave to defend should be granted.

Appeal allowed and order of Master restored. Costs here and below to be costs in the cause.

SEPTEMBER 17TH, 1907.

C.A.

CAVANAGH v. GLENDINNING.

Principal and Agent — Agent's Commission on Sale of Mining Lands — Percentage Rate — On what Amount Commission Payable — Change in Form of Transaction — Continuity of Transaction — Substitution of Purchaser — Order of Divisional Court Directing New Trial — Appeal from, by Defendants — Increase in Amount Awarded to Plaintiffs without Cross-appeal — Judgment — Rule 817.

Appeal by defendants from order of a Divisional Court (28th November, 1906), upon the appeal of plaintiffs, setting aside the judgment of BOYD, C., at the trial, which was in favour of plaintiffs, but only to the extent of \$1,500 and costs, and directing a new trial, with liberty to plaintiffs to amend their statement of claim by making an alternative