

OCEAN ACCIDENT AND GUARANTEE CORPORATION v. LAROSE AND OTHERS.

1918

*Oct. 17, 18.
*Nov. 18.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA.

Debtor and creditor—Judgment—Release—Bond.

APPEAL from the judgment of the Supreme Court of Alberta, Appellate Division (1), reversing the judgment of Ives J. at the trial and maintaining the respondents' (plaintiffs') action.

The respondents, three in number, obtained a judgment against two defendants; and two of the joint judgment creditors entered into an agreement with one of the judgment debtors in settlement of the amount of the judgment. The third judgment creditor obtained, on the face of the document, no interest in such agreement, following which an appeal by the judgment debtors was discontinued. The present action was subsequently brought by the judgment creditors, the present respondents, against the appellant upon a bond given as security for the judgment in the first action and the appellant relied upon the above agreement as a release.

The trial judge held that the execution of this agreement by two of the three joint judgment creditors or partners constituted a release at law and he dismissed the action with costs. The Appellate Division held that, although there was no allegation or evidence of intent to defraud, it would be unjust and inequitable to hold the third joint creditor bound by such agreement.

*PRESENT:—Sir Louis Davies C.J. and Idington, Duff, Anglin and Brodeur JJ.

(1) 13 Alta. L.R. 187; [1918] 1 W.W.R. 616.

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On the appeal by the defendant to the Supreme Court of Canada, the court, after hearing counsel for both parties, reserved judgment, and, at a subsequent date, dismissed the appeal with costs.

Appeal dismissed with costs.

Chrysler K.C. for the appellant.

Woods K.C. for the respondent.