

STUART CAMPBELL, LTD., v. KAPLAN &  
RABINSON.

1910. November 11. MAASDORP, C.J., and FAWKES  
and WARD, JJ.

*Provisional sentence.—Covering bond.—Money advanced.*

Where K & R had acknowledged their indebtedness to C under a covering bond in a certain amount at the date of execution, and there had been a breach of two of the conditions of the bond, *Held*, without more, that provisional sentence must be granted for the amount acknowledged in the bond as due, and the lease specially hypothecated must be declared executable.

*Mosenthal & Co. v. Lindley* ([1905] T.S. 580) followed.

The plaintiffs sued the defendants for provisional sentence on a covering bond under which a lease had been specially hypothecated, and the defendants had acknowledged in the bond that the plaintiffs had advanced them £400. Plaintiffs credited defendants with £75, 14s. 4d. of that amount as having been paid on account, and claimed the balance—£324, 5s. 8d. The bond was due by reason of the breach of two conditions, namely, (1) in that the defendants had allowed execution to be levied against the assets of their firm, and (2) in that they had failed to pay the £400 advanced, which under the bond was to become payable immediately on issue of a writ of execution against their goods. There was a further prayer for the lease to be declared executable.

*Blaine, K.C.*, for the plaintiffs: See *Mosenthal & Co. v. Lindley* ([1905] T.S. 580).

Provisional sentence was granted and the lease declared executable.

Plaintiffs' Attorney: *G. A. Hill*.

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