

Substantially the plaintiff failed to prove any material allegations made in the statement of claim, except the death of the plaintiff's son and the ownership of the boat, neither of which was actually in dispute.

There should be judgment dismissing the action with costs; but, in the event of the litigation ending with this judgment, the dismissal should be without costs.

MIDDLETON, J.

NOVEMBER 25TH, 1920.

WADE V. PEDWELL.

*Fraudulent Conveyance—Gift of Land by Husband to Wife—Voluntary Settlement—Solvency of Husband at Time—Subsequent Insolvency—Intent—Hazardous Business—Subsequent Creditors.*

Action by the assignee for the benefit of the creditors of Charles Pedwell to set aside a conveyance of land by Pedwell to his wife.

The action was tried without a jury at Walkerton.  
 David Robertson, K.C., for the plaintiff.  
 J. L. Killoran, for the adult defendant.  
 O. E. Klein, for the infant defendants.

MIDDLETON, J., in a written judgment, said that the conveyance was made in 1912, when Pedwell was carrying on business as a saw-miller and lumberman. The transaction was entirely voluntary, and Pedwell's evidence satisfied the learned Judge that the land was the subject of a gift by him to his wife. Pedwell was at that time solvent, but during the next year suffered severe financial reverses; he struggled on until 1919, when, being badly insolvent, he assigned for the benefit of his creditors. The assignee did not desire to attack the transfer of the land to the wife; but one Tackaberry, a creditor and the real plaintiff, made the attack, in the name of the assignee, under the provisions of the Assignments and Preferences Act. Tackaberry was not in a position to complain on his own account, for he was paid his entire claim existing at the time of the transaction, and was a party to the arrangement under which the land was conveyed to the wife. He was, however, a creditor with respect to dealings which took place long afterwards.