

MIDDLETON, J.

OCTOBER 4TH, 1918.

## DOLSON v. JONES.

*Fraudulent Conveyance—Action to Set aside—Status of Plaintiff  
—Secured Creditor—Adequacy of Security—Husband and Wife.*

Action to set aside a conveyance from husband to wife.

The action was tried without a jury at a Toronto sittings.

J. T. Richardson, for the plaintiff.

D. Urquhart, for the defendants.

MIDDLETON, J., in a written judgment, said that the plaintiff was a mortgagee suing for foreclosure. The day after the writ of summons was served, the husband conveyed all his property to his wife as a protection in respect of money owed to her, and, it was said, to protect other creditors.

The defendants relied upon the fact that the plaintiff could not be regarded as a "creditor" under the statute unless it was shewn that his security was inadequate. The only evidence was that, even in the present depressed condition of the market, his security was adequate. This must be his own view, for he was asking foreclosure.

Nothing could be usefully added to what was said in *Clark v. Hamilton Provident and Loan Society* (1884), 9 O.R. 177; *Crombie v. Young* (1894), 26 O.R. 194; *Thomas v. Calder* (1902), 1 O.W.R. 26.

As neither husband nor wife gave oral evidence at the trial, the learned Judge made no finding of fact upon the other issues raised.

On the ground taken, the action failed.