

SECOND DIVISIONAL COURT.

DECEMBER 27TH, 1918.

## ROBINSON v. ROBINSON.

*Husband and Wife—Grain and other Chattels Seized on Wife's Farm under Execution against Husband—Claim by Wife—Interpleader Issue—Evidence—Finding of Trial Judge in Favour of Wife as to Grain Grown on Farm—Finding in Favour of Execution Creditor as to other Chattels—Reversal on Appeal.*

Appeal by the defendant (claimant) from the judgment of LATCHFORD, J., 14 O.W.N. 199, finding an interpleader issue in favour of the plaintiff (execution creditor).

The appeal was heard by MULOCK, C.J.Ex., CLUTE, SUTHERLAND, and KELLY, JJ.

William Proudfoot, K.C., for the appellant.

G. H. Kilmer, K.C., for the plaintiff, respondent.

The judgment of the Court was read by CLUTE, J., who said that the trial Judge had found that the farm stock and implements were exigible under the plaintiff's execution against Thomas Robinson, the defendant's husband.

The documents in evidence were joint promissory notes signed by the defendant and her husband, given for the chattels seized, and afterwards paid by the defendant. Having regard to the surrounding circumstances: to the fact that the husband had sold out his own farm and stock; that the property seized had been paid for entirely by the defendant; that she was in possession of the farm upon which they were seized and was receiving the produce thereof, and was found entitled to the crop seized; that there was no suggestion of fraud on the part of either husband or wife; that there were no outstanding debts of the husband to suggest that the arrangement was entered into to defraud creditors; that the judgment against the husband was not for debt, but for a tort; and that there was no evidence to contradict that of the defendant and her husband; it must be held that the plaintiff in the issue had failed to establish that the property seized was exigible under his execution.

The appeal should be allowed with costs and the issue should be found in favour of the defendant with costs.

*Appeal allowed.*