In short it appears from the evidence both of Smith and Colwell, that Smith had asked Colwell for security shortly before the security was given, and that the security given was that which was promised. This, I think, is sufficient upon the authorities to constitute pressure inducing the giving of the security: Molsons Bank v. Halter, 18 S. C. R. 88; Stephens v. McArthur, 19 S. C. R. 446.

The result will be that the claimant should be held entitled to be paid his debt first out of the moneys realized from the judgment which has been assigned to him. He has paid, it appears, $263.61, and he will be entitled to interest upon this sum and to his costs here and below.

The primary creditor will be entitled to judgment against the garnishees for the surplus over Smith's claim.

BRITTON, J.—I concur.

FALCONBRIDGE, C.J.—I agree with my brother Street, in this conclusion as to the application of the 60 days' rule and its result on the burthen of proof.

But, conceding this point to the appellants, I do not agree in holding the learned Judge in the Court below to have been wrong in his findings of fact. He had ample ground for saying that he did not believe the evidence put forward to support the pressure, and his judgment ought not to be reversed, because he has not said so in express terms.

In my opinion the appeal ought to be dismissed.

Appeal allowed with costs.

McEvoy & Perrin, London, solicitors for primary creditor.

Gibbons & Harper, London, solicitors for claimant and primary debtor.

WEEKLY COURT.

FEBRUARY, 22ND, 1902.

MARKS v. WATEROUS ENGINE WORKS CO.

Sale of Goods — Property not Passing — Breach of Warranty — Counterclaim for Balance of Purchase Money—Effect—Foreclosure of Property—Pleading.

McIntyre v. Crossley, [1895] A. C. 463, followed.

Motion by the defendants to vary the minutes of judgment pronounced on April 15th, 1901, by limiting a time for the payment of the amount found due the defendants by