Street, J.] CONN. v. SMITH. Nov. 27, 1897.

Insolvency—Advances by bank to insolvent—Pledge of goods as security—Bank Act—Claim by creditor to recover from bank moneys arising from sale of goods—58 Vict., c. 23, s. 1 (O.)—"Invalid against creditors"—Retroactivity of statute—Warehouse receipts—Exchange of securities—53 Vict., c. 31, s. 75, sub-sec. 2 (D)—Collateral security—Mortgage—Declaration—Parties.

Action by a simple contract creditor of the defendant Smith to recover judgment for a debt, and on behalf of all creditors of Smith to recover from the defendants the Merchants Bank of Canada certain moneys and property of Smith alleged to have come to their hands by means of breaches of the Bank Act. Thirteen transactions were attacked. Eleven of them related to pledges of hay and grain made by Smith to the bank, in or before 1893, to secure advances. The plaintiff alleged that in these transactions there had been no contemporaneous advance, and that the pledge, whether in the form of a bill of lading or a warehouse receipt or a direct pledge, was invalid under s. 75 of the Bank Act, 53 Vict., c. 31. It was not disputed that the bank had before action disposed of the hay and grain, received the proceeds, and applied them in satisfying moneys advanced to Smith.

The plaintiff claimed, as one of the creditors of Smith, who had ceased before this action to meet his liabilities, to be entitled to obtain the moneys so received by the bank, and to apply them in payment of creditor's claims, under s. 1 of 58 Vict., c. 23 (O.) which is as follows: "In case of a gift, conveyance, assignment, or transfer of any property, real or personal, which in law is invalid against creditors, if the person to whom the gift . . . was made shall have sold or disposed of the property or any part thereof, the money or other proceeds realized therefor by such person may be seized or recovered in any action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift . . . was made, and such right to seize and recover shall belong, not only to an assignee for the general benefit of the creditors of the said debtor, but shall exist in favour of all creditors of such debtor, in case there is no such assigment."

The evidence showed that there was sufficient pressure by the bank to exclude the intent of fraudulent preference in the transactions in question.

Held, that the words "invalid against creditors" should be treated as limited to transactions invalid against creditors, qua creditors, and not as extending to transactions declared invalid for reasons other than those designed to protect creditors.

Held, also, that the Act of 1895 did not apply, because the money had been received by the bank before it was passed, and that it was not retrospective, as was argued, because it conferred a right which had no previous existence, and did more than merely make an alteration in procedure.

The next question concerned a quantity of hops still remaining unsold, which were held for the bank in a warehouse, under a receipt given by Hiscox, the lessee of the warehouse. The defendant Smith was in the habit