

all his debts. Defendant and P. both swore that they believed D.'s statement of his affairs and thought him solvent.

Held, applying the principle of *National Bank of Australia v. Morris* (1892), A.C. 290, that under the circumstances which had come to their knowledge, defendants if they did not actually know should have known that D. was insolvent; that D. was fully aware of his insolvency and that the chattel mortgage was given with the conjoint intent of giving defendants an unjust preference. Judgment accordingly declaring chattel mortgage void.

E. A. Dunbar, for plaintiff. *H. E. Rose*, K.C., for defendants.

NOTE.—The above judgment was confirmed on an appeal to the Divisional Court, Chancery Division, on March 13.—*Ed. C.L.J.*

Province of Manitoba.

COURT OF APPEAL.

Full Court.]

FISHER v. JUKES.

[March 3.

Appeal to Supreme Court—Leave to appeal—Special circumstances—Supreme Court Act, s. 71—Discovery of new evidence.

The plaintiff had judgment in his favour which was affirmed by this court on appeal. During the reference to the Master to take the account ordered, the defendant for the first time noticed among the documents, which the plaintiff had produced before the trial, an affidavit which the plaintiff had made before the commencement of the action in which he had made a statement apparently at variance with his evidence at the trial. The trial judge's attention had been called to this affidavit at the trial, but he had not referred to it in his judgment, and it was not considered on the hearing of the appeal before this court.

Held, Cameron, J.A., dissenting, that, although this could not be treated as a discovery of new evidence warranting a new trial, yet it was such a special circumstance that, under s. 71 of the Supreme Court Act, this court might properly grant the defendant leave to appeal to the Supreme Court, after the lapse of time allowed for an appeal as of right.

Fullerton, for plaintiff. *Phillips*, for defendant.