

Chan. Div.]

NOTES OF CANADIAN CASES.

[Q.B. Div.]

prove it without the papers, and intimates that he could if he had the papers.

In this action the plaintiffs sued the defendants on a bond given by the latter to guarantee the honesty of one M. in discharging his duties as cashier of the plaintiff's bank, charging that M. had misappropriated large sums belonging to the bank. The defence set up that, owing to certain alleged conduct and negligence on the part of the directors of the plaintiffs' bank, the plaintiffs could not recover against the defendants as sureties in the bond. This alleged conduct and negligence had regard to dealings by the plaintiffs in stocks and neglect or want of diligence of the directors in not examining the books and knowing from time to time and at all times how they were kept, and precisely what entries were being made, and what business done, so that they would have been able to detect, and would have detected any errors of M., and notified the said sureties, who, as it was, said they did not know of the alleged defalcations of M. until he had absconded to the United States.

Held, that to sustain this defence the sureties must show connivance between the plaintiffs and their principal.

There are many authorities, showing that negligence is not fraud, but that it may be evidence of fraud. In the same way it may be said that negligence is not connivance, but may be evidence of connivance, though the degree of negligence that would be proof of fraud or connivance may be difficult to state. The chief reliance of the surety is, and ought to be, in the honesty of the man whose honesty he has guaranteed to another, and, unless an act of connivance is affirmatively proved, a very strong case of negligence must be made out. The surety is not in a position to say to the employer: You should have so diligently watched the conduct of the man whose honesty I guaranteed to you, that no serious wrong could have been accomplished by him.

J. Bethune, Q.C., and Patterson, for the plaintiffs.

S. H. Blake, Q.C., and Martin, Q.C., for the defendants.

Full Court.]

[March 13.]

SLATER V. OLIVER.

Fraudulent preference—Pressure.

R. S. O. c. 118, s. 2.

Appeal from the judgment of PROUDFOOT, J., of December 14th, 1882.

This was a creditor's action to set aside a certain bill of sale of personal property as fraudulent and void, as against the creditors of the grantee.

The evidence shewed that the bill of sale was reluctantly given by the debtor, and that he only yielded after some delay, and to a continuous insistence on the part of his creditors, and that the demand of the creditor was made in good faith, with no intent but to obtain the security, which she was advised she ought to have; and though the effect of it undoubtedly was to deprive the debtor of the means of paying his other creditors; his intent in giving it was to escape his creditor's importunity; and, but for the latter's unequivocal and pressing demand, it would not have been given.

Held, affirming PROUDFOOT, J., the bill of sale was not void under R. S. O. c. 118, s. 2.

This section requires us to look at the intent with which the conveyance, or gift in question, was made, and if there be honest pressure on the part of the creditor, that rebuts the presumption of an intent on the debtor's part to act in fraud of the law.

J. H. Macdonald, for the plaintiff.

C. Moss, Q.C., for the defendant.

QUEEN'S BENCH DIVISION.

RE HERRING V. NAPANEE, ETC., Ry. Co.

Railway—Compulsory powers—Arbitration.

A notice of appointment of arbitrator and of that of third arbitrator, in conformity with 42 Vict. c. 9, D. may be made a rule of Court under sec. 201, C. L. P. A.

A letter was addressed by the construction committee on the closing of the evidence to the owner of the land proposed to be taken, consenting to what would diminish the injury to his property, and was delivered to the railway company's arbitrator before the award was made, and given by him to the umpire.