

Reports and Notes of Cases.

Dominion of Canada.

SUPREME COURT.

Alta.]

[MARCH. 5, 1918.

MCKILLOP & CO. v. ROYAL BANK OF CANADA.

Debtor and Creditor—Security on crop—Lease of homestead—Family arrangement—Bills of Sale Ordinance, Cons. Ord. N.W.T. c. 43, s. 15.

G., an insolvent owing a considerable sum to the Royal Bank, leased his homestead to his son, a minor, at a rental of half the crop to be grown thereon. The son took a lease of another farm on similar terms and, though not personally its debtor, assigned both leases and his interest in the crops to the bank, which agreed to advance money for putting in and harvesting the crops, the father and son undertaking that the proceeds from their sale would be applied first to payment of the advances and next of the father's original debt. Later, under a covenant for farther assurance in the assignments, a bill of sale of the severed crops was given the bank as additional security. Under executions against G. which, to the knowledge of the bank, were in his hands when the lease was given to the son, the sheriff seized the two crops. On appeal from the judgment of the Appellate Division in favour of the bank on an interpleader issue:—

Held, per Fitzpatrick, C.J., that the transactions with the bank were not fraudulent as against the creditors of G.; that as the bank had notice, before entering into these transactions, of the executions out against G. the creditors were entitled to his share of the crop grown on the homestead; but the rest of the grain, in which G. had no interest, remained as security to the bank under the above mentioned agreements.

Per Idington and Anglin, JJ., that the son, to the knowledge of the bank, was acting throughout for his father with whom the bank was really dealing in taking security for its debt; that so far as the bills of sale of the crops were intended to secure the past debt to the bank they were fraudulent as against creditors and void; and the assignments to the bank were void under sec. 15 of the Bills of Sale Ordinance (Cons. Ord. N.W.T. ch. 43)