

repairs were needed which would cost more than \$400. The agreement was that the Foresters should sell to Mary E. Fitzgerald, upon her executing jointly with her husband a mortgage for \$38,000 (the amount of the Foresters' claim), plus \$1,250, which the Foresters agreed to advance to pay off the taxes and make the repairs, on condition that Mary E. Fitzgerald would give them a chattel mortgage on the household furniture then in her house at London. This agreement was carried out by the execution of the instruments and the advance of the \$1,250.

J. A. Paterson, K.C., for plaintiff.

G. F. Shepley, K.C., for defendant Mary E. Fitzgerald.
W. R. Meredith jun., for defendant F. A. Fitzgerald.

J. A. McGillivray, K.C., for defendants the Independent Order of Foresters.

MACMAHON, J. (after setting out the facts and referring to portions of the evidence):—This is not a case in which it has been shewn that there was any contrivance, fraud, or collusion between the mortgagees and Mrs. Fitzgerald whereby the latter was to become a purchaser for an inadequate consideration so as to defeat the rights of creditors: Bump on *Fraudulent Conveyances*, 4th ed., sec. 235: but is a case where every precaution was taken by the mortgagees to prevent the property being sold at an undervalue. Being sold, as I find, at its fair value, the action of the Foresters in making the sale cannot be successfully attacked, and, if so, it is impossible to see how the position of Mrs. Fitzgerald as purchaser of the property can be successfully assailed. . . .

The household furniture being regarded, as I think it must be, as the property of F. A. Fitzgerald, the question is, can that make any difference in the rights of the mortgagees in this litigation? They assumed, when the chattel mortgage on the furniture was offered as security for the additional advance of \$1,250, that it was the property of Mrs. Fitzgerald, and plaintiff, before the agreement was executed, became aware of all the terms of the agreement, which provided for the giving of the chattel mortgage, and, with the knowledge so acquired, presented the agreement to Mrs. Fitzgerald and acquiesced in its execution by her. The Foresters, on the strength of the execution of the agreement, changed their position by advancing the \$1,250, and Mrs. Fitzgerald changed her position, covenanting to pay the amount of the mortgage debt, \$38,000, besides the \$1,250, which by the chattel mortgage she covenanted to pay.