

vency of Spada—in short that, so far as Garborino is concerned, there was no fraudulent intent at all in reference to Spada's creditors, then this case is wholly within and governed by the latest decision, viz., Benallack v. Bank of British North America, 36 S. C. R. 120. See also Molsons Bank v. Halter, 18 S. C. R. 88; Gibbons v. McDonald, 20 S. C. R. 587; Stephens v. McArthur, 19 S. C. R. 446.

I am of opinion that Garborino has fully met the presumption raised against him by the immediate failure and absconding of Spada.

I do not at all regard as immaterial or unimportant the point raised by counsel for defendant that in any event this transfer is good within sec. 3 of the Act, as it was a bona fide transfer of goods by way of security for a present actual advance of money. . . . It is true that as to this sum of \$1,906 Garborino was already a creditor as defined by R. S. O. 1897 ch. 147, sec. 2, sub-sec. 5, but, even if a creditor and so relieved in part by the money he lent to Spada, still it was an actual advance of money to Spada. . . . I do not, however, decide the case upon this point. . . .

My decision is that there was no fraudulent conduct or intent on the part of Garborino.

I think the action should be dismissed, as to Garborino with costs, and as to Spada without costs. Spada put in no defence, but, as the action fails, is entitled to judgment: see McDermott v. McDermott, 3 Ch. Ch. 38.

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MARCH 1st, 1906.

DIVISIONAL COURT.

CASSELMAN v. BARRY.

*Master and Servant — Injury to Servant — Negligence — Dangerous Work—Absence of Inspection — Findings of Jury—Common Law Liability — Joint Tort-Feasors—Death of One—Action against Survivor and Executors of Deceased—Damages—Motion for New Trial on Affidavits—Charge of Unprofessional Conduct against Solicitor—Affidavits—Contradiction.*

Motion by defendants to set aside the judgment for \$6,500 directed to be entered for plaintiff after the trial before