

the end they became exceedingly complicated. The unravelling of the complication, in the light of the evidence of the parties, involved serious questions of credibility, which were all determined in the plaintiff's favour. It would, therefore, be quite unusual to interfere with the conclusions of the learned trial Judge upon the facts, unless we could see some reasonably clear error or omission.

A defence not pleaded, and not entitled to much favour if it had been, is attempted to be set up in this Court, based upon certain facts found by Riddell, J., concerning certain chattel mortgages upon the goods of the defendant which were taken by the plaintiff for the purpose, as he practically admits, of protecting the property from the creditors of the defendant. These transactions were not creditable to the plaintiff any more than to the defendant, but, if the defendant desired to get the benefit of the defence, she should have pleaded it. She has, as the result of unusual kindness, and indeed generosity, on the part of the plaintiff, in his attempts to assist her in her business, now in her possession a large sum of money which she should in honour pay him. To such a condition met by such a defence, the forcible language of James, L.J., in *Hargle v. Kaye*, L.R. 7 Ch. 469, at p. 473, seems applicable: "If a defendant means to say that he claims to hold property given to him for an immoral purpose in violation of all honour and honesty, he must say so in plain terms, and must clearly put forward his own scoundrelism if he means to reap the benefit of it."

But the defence, even if pleaded, would, if I understand the facts, have been no defence. The claim in respect to which the plaintiff now has judgment is made up of items of loans and advances quite apart from these chattel mortgages, which, of course, he could not and does not seek to enforce.

I would dismiss the appeal with costs.

JULY 13TH, 1911.

*RE HENDERSON ROLLER BEARINGS LIMITED.

Assignments and Preferences—Assignment for Benefit of Creditors—Goods Seized by Sheriff—Interpleader—Claim of Assignee—Rights of Interpleading Creditors—Priority—Assignments and Preferences Act, sec. 14—Creditors' Relief Act, 9 Edw. VII. ch. 48, sec. 6, sub-sec. 4—Status of Assignee.

*To be reported in the Ontario Law Reports.