

consent to her doing business in her own name, on March 31st, 1904, registered a declaration under the Act of her intention to carry on business under the name and style of B. & Co. and gave a power of attorney to L. H. B. to act as manager of such business. In March, 1907, at a time when the firm of B. & Co. was in difficulties and unable to meet its liabilities, L. H. B. executed a bill of sale in his own name to defendant M. to secure the sum of \$1,700 and at the same time delivered to him a promissory note for the same amount payable on demand. By agreement between the parties the bill of sale was not filed but was retained in the possession of M.'s solicitor until June, 1909, when M. purporting to act under the bill of sale sold the goods of B. & Co. to C. for the sum of \$1,700, taking in part payment the note of C. made to B. & Co. and indorsed by B. & Co. to him. On the following day he brought action on the promissory note and recovered judgment for the amount of the note with interest and costs, and issued execution. In the interim between the date of the giving of the bill of sale and note B. & Co. had made payments on account and had been supplied with other goods by defendant.

In an action by plaintiff and other creditors to set aside the bill of sale and for an accounting and other relief,

*Held*, 1. The agreement between defendant and L. H. B. under which the bill of sale was not to be recorded rendered the transfer void as against creditors.

2. The promissory note given to defendant contemporaneously with the bill of sale was a continuing security upon which defendant was entitled to recover except in so far as the indebtedness had been reduced by payments, the amount to be determined by the assignee.

3. The judgment recovered by defendant in his action on the note could not be attacked collaterally or in the present proceedings.

*Mellish*, K.C., for appeal. *Rogers*, K.C., and *McLatchy*, contra.

Full Court.]

[Nov. 26, 1910.

GORTON-PEW FISHERIES CO. v. NORTH SYDNEY MARINE RY. CO.

*Negligence—Marine railway—Contract for hauling—Liability for proved acts of negligence—Negligence inferred from facts proved.*

Defendant company took charge of plaintiff's vessel for the