due to his own labor and risk; and if there is insufficient to pay the remaining creditors, they are in a better position than if the machine had been idle during the threshing season of 1890. Is a debtor to be precluded from renting his house to a creditor at a fair rental? or similarly a chattel, as in this instance? Surely not.

The settlement of the rent in October appears to have been also *bonâ fide* and without fraudulent intent. The whole went in payment of Albert's debts, and was not in payment or preference by a debtor to a creditor, but the contrary. Albert, to about the extent of $350.00, was a creditor, not a debtor; and in no ways could the anticipation of payment by his debtor to him (and which is the latter's privilege) be construed as coming within what is forbidden by the Act.

I think that section 3, construed in a broad and liberal spirit, protects both transactions; and that the claim of the intervener should prevail. To hold otherwise must be to assert that any mutual adjustment of cross accounts between two parties would be a fraudulent preference as against the creditors of either of them. I submit that no such construction can be put upon the statute. But if I am mistaken in this view, I am of opinion, by the long chain of cases culminating in *Molsons Bank* v. *Halter*, 16 A.R. 326 (affirmed by S.C.), and *Gibbons* v. *McDonald*, 19 O.R. 290 (affirmed in appeal), that James' claim must prevail against the execution creditors of Albert. It is not clear that Albert is insolvent, or unable to pay his debts in full. Whether he is or is not will depend upon the margin over incumbrances on sale of his realty. At all events, I cannot find, on the evidence, that he was so, with the knowledge of James.

And, further, I cannot find that there was any intent on the part of either, or both, to make a preference.

Under all the circumstances I find in the claimant's favor, with costs (including a $5.00 counsel fee), to be borne rateably by the execution creditors.

The amount in question, and in court, is considerably more than $100.00. It is a "contested case" and the claimant is a "successful party," within the meaning of section 208 of the C. C. Act, even if s-s. 2 of section 155 did not expressly extend section 208 to contestations of this nature.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Chancery Division.

FULL COURT.] [Jan. 19.

WATEROUS ENGINE CO. *v.* PALMERSTON.

Municipal Corporation—Contract for purchase of fire engine—Necessity of by-law.

The defendants, pursuant to resolution, invited tenders from the plaintiffs for supply of a fire-engine, and subsequently contracted under seal for the purchase of a fire-engine from them, subject to certain tests, which were satisfactorily fulfilled; after which the defendants nevertheless refused to accept the engine, and the plaintiffs now brought this action to recover the price thereof.

Held, affirming the decision of Rose, J., that the action must be dismissed, for under the Municipal Act, R.S.O., 1887, c. 184, ss. 480 and 630, as amended by 52 Vict., c. 36, ss. 20 and 40, the power of municipal bodies to purchase fire-engines can only be exercised by by-law.

Wilkes for the motion.

Clarke contra.

Full Court.] [Jan. 19.

BOYD *v.* ROBINSON.

Bond of indemnity—Judgment—Damages.

Boyd and Robinson were in partnership, and Boyd retired. Robinson (who continued the business) and his wife, Mary Robinson, executed a bond in a penal sum of $6000, conditioned that "If the said Robinson shall from time to time, and at all times hereafter, well and truly save, defend, and keep harmless, and fully indemnify the said Boyd, his executors and administrators, from and against all loss, costs, charges, damages, and expenses, which the said Boyd may at any time hereafter bear, sustain, or suffer, or be put to for or by reason of the non-payment by the said Robinson of the liabilities of the said firm of Robinson & Boyd, when and as the same become due and pay-