McKenna v. Smith.

Fraudulent preference—Injunction

A debtor while indebted to one creditor, and alleged to be insolvent, assigned a note to another creditor for a *bonâ fide* debt. Subsequently both creditors brought actions to recover their respective demands, but in order to enable one of them to obtain a first judgment no defence was entered to his action, while the other action was defended. The court (following the decision of *Young* v. *Christie*, reported *ante* volume vii., page 312), refused an injunction to restrain the first judgment creditor from enforcing the execution sued out on his judgment.

In this case an *ex parte* injunction had been granted to restrain the defendant *Hutty* from proceeding to sell the goods of the defendant *R. C. Smith,* with liberty to move to continue the injunction to the hearing, and a motion for that purpose was accordingly made by

Mr. *Barrett,* for the plaintiff.

Mr. *M. C. Cameron,* Q.C., contra, referred to *Young* v. *Christie, and Ferguson* v. *Baird* (a).

Judgment—Vankoughnet, C.—This is a motion to continue an interim injunction to the hearing under the following circumstances as appear by the affidavits now filed on both sides.

R. C. Smith, one of the defendants, being indebted to the defendant *Peter Hutty* assigned to him as a means of securing and obtaining payment of his debt a note for $300, made by the other defendant, *J. M. Smith,* in favour of *R. C. Smith,* and by the latter endorsed. Upon this note *Hutty* brought two actions, recovering judgments severally against the maker and endorser; under the judgment against the latter, he has seized personal property to the value of about $1200, as alleged. At the time of the delivery of this note to the defendant *Hutty,* the defendant *R. C. Smith* was indebted to the

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(a) 10 U. C. C. P. 493.