

FRAUD ON THE INSOLVENT ACT—NOTES OF CASES.

obtain ultimately a preference over them, and would be grouped in the same category with trust debts, and others to which the Act does not apply. The sounder conclusion, it is submitted, would be that such a claim, being founded on an illegal transaction, is, for all purposes, invalid. That, in brief, is the view of Thesiger, L. J., in *Ex parte Williams*, as he makes use of this language as to the attornment clause: "Then there was a separate stipulation which might have taken effect in other event, but which was palpably intended only to take effect in case of the mortgagor's bankruptcy." And it would seem to be the view of Mr. Justice Gwynne. Refer to his language in *Griffith v Brown*, 21 C. P. at p. 16.

An analogy also may be found in such cases as *Kerrison v. Cole*, 8 East, 231, where it was held that though a bill of sale for transferring the property in a ship by way of mortgage may be void, as such, for want of compliance with the requirements of the statute, 26 Geo. III., c. 60, yet it may be good as to the personal covenant contained therein, made by the mortgagor for the repayment of the money lent. Lord Ellenborough thought that to vacate the covenant for payment of the money lent would be going beyond the reason and object of the legislature in order to work injustice. And Le Blanc, J., said that as there was nothing immoral in the transaction itself there was no necessity for carrying the construction further. But in the case we are dealing with, no debt arises apart from the stipulation which is in contravention of the policy of the Insolvent Acts—there is no antecedent debt, and honesty does not require that remedies should be preserved as between the parties to the instrument which are not recognised in the administration of the assets by the assignee in insolvency.

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED
IN ADVANCE, BY ORDER OF THE
LAW SOCIETY.

COMMON PLEAS.

VACATION COURT.

Cameron, J.] [September 16.

CANADA AGRICULTURAL INSURANCE COM-
PANY V. WATT ET AL.

*Principal and surety—Insurance agent—
Bond for faithful discharge of duties.*

Action on a bond given by defendants, W. and A., for the faithful performance of W's duties as plaintiffs' agent, and for the payment of all moneys, &c. received by him as such agent, alleging as a breach the nonpayment of certain moneys of the plaintiffs' received by him.

Plea: By defendant A, setting up, in substance, that when he executed the bond as such surety, W. was agent under an agreement with plaintiffs, whereby his remuneration was by fixed salary, and that afterwards, and before breach, the plaintiffs, without A's knowledge or consent, discharged W. from his then engagement, and re-engaged or re-appointed him on different terms, &c., namely, that his remuneration was to be by commission allowed for services performed, instead of by fixed salary as before.

Replication: In substance, that the remuneration of W, as such agent, whether by fixed salary or commission, formed no part of, and was not contemplated in the contract of suretyship, nor was the change in any way prejudicial to the interests of the surety, nor did it impose any greater liability upon him, and the said change did not include any change of the duties and obligations of said W as said agent.

Held, by CAMERON, J. replication bad, as being no answer to the plea which alleged a discharge of W. from his engagement and a re-engagement of him on different terms.

Seemle, that the change in the mode of remuneration, namely by commission instead of by fixed salary would terminate the contract of suretyship.