

the amount of \$2,768.28, upon which the bank collected \$1,603.43, and still kept a note of J. P. & Co. unpaid of \$1,165.32.

On the return of W. E. E. another note of John Elliott & Co. for \$1,101.33, previously discounted by W. E. E., became due at the bank, thus leaving a total debit of the Elliott firms on their joint paper of \$2,660.53. The old note of \$5,087.50 due 1st October, and the one of \$1,101.33, were signed by John Elliott & Co., and on the 10th August were replaced by two notes signed by Elliott, Finlayson & Co., and secured by 200 barrels of oil, viz., 146 barrels remaining from the original number pledged and an additional warehouse receipt of 54 barrels of oil, endorsed over by W. E. E. to Finlayson, Elliott & Co., and by them to the bank. The respondent, as curator for the estate of W. E. Elliott & Co., claimed that the pledge of the 200 barrels of oil on the 10th August and the giving of the notes on the 16th July to the Bank were fraudulent preferences. The Superior Court held that the bank had knowledge of W. E. E.'s insolvent condition on or about the 16th July, and declared that they had received fraudulent preferences by receiving W. E. E.'s customers' notes and the 200 barrels of oil, but the Court of Appeal, reversing in part the judgment of the Superior Court, held that the pledging of the 200 barrels of oil by Elliott, Finlayson & Co. on the 10th August was not a fraudulent preference. (*Vide* 1 B. R. Q. 371.)

On an appeal and cross appeal to the Supreme Court :

*Held*, 1st, that the finding of the Court below of the fact of the bank's knowledge of W. E. Elliott's insolvency dated from the 13th July was sustained by evidence in the case, and there had therefore been a fraudulent preference given to the bank by the insolvent in transferring over to it all his customers' paper not yet due. Gwynne, J., dissenting.

2nd. That the additional security given to the Bank on the 10th August of 54 barrels of oil for the substituted notes of Elliott, Finlayson & Co. was also a fraudulent preference. Gwynne, J., dissenting.

3rd. Reversing the judgment of the Court of Queen's Bench and restoring the judgment of the Superior Court, that the legal effect of the transaction of the 10th August was to release the pledged 146 barrels of oil, and that they became immediately the property of the insolvent's creditors, and could not be held by the bank as collateral security for Elliott, Finlayson & Co.'s