

Common Pleas Division.

Div'l Court.]

[Nov. 19, 1894.]

CROMBIE v. YOUNG.

Mortgage—Subsequent voluntary settlement by mortgagor—Validity of.

The mortgagees of land are not, merely by reason of their position as such, creditors of the mortgagor within the 27 Eliz., c. 4., nor is the mortgage debt a debt within that statute, but only when it is shown that the mortgage security at the time of the loan was of less value than the amount thereof.

Where, therefore, shortly after the making of a mortgage, the mortgagor, otherwise financially able to do so, made a voluntary settlement on his wife of certain property, the mortgaged property at the time being greatly in excess of the amount of the loan, and deemed by all parties as ample security, and no intention to defraud shown, the settlement was upheld, though, from the stagnation of real estate when the mortgage matured, a sale of the property for the amount of the indebtedness thereon could not be effected.

Worrell, Q.C., for the plaintiff.

Moss, Q.C., and Douglas for the defendant.

MEREDITH, C.J.]

[Nov. 19, 1894.]

ROBERTS v. DONOVAN.

Contempt—Imprisonment for—Judgment directing discharge of mortgage—Failure to perform—Liability to commitment—Married woman.

Where, in accordance with the judgment of the Court of Appeal herein, the judgment directing the defendants to discharge a mortgage within a limited time was served on them with a notice endorsed thereon that the failure to comply with such demand, after the expiration of a month, from the service thereof, would render them liable to commitment for contempt. On a motion therefor, after the lapse of the month, an order for commitment was made which included both defendants, one of whom was a married woman.

Remarks as to the policy of the order, but that this was for the legislature, and not for the courts, to deal with.

Moss, Q.C., for the motion.

The defendant, J. A. Donovan, for himself in person, and for the defendant Julia Donovan, his wife.

Div'l Court, BOYD, C.]

[Dec. 20, 1894.]

CHAPMAN v. HUNBURY.

Vendor and purchaser—Rule to prove possessory title.

A different rule of practice exists in cases of vendor and purchaser and in matters of litigation between adverse claimants; for while in the latter purely affirmative evidence is all that is required, in the former a vendor may be required to furnish evidence to prove or disprove facts which, if he were,