was intended to operate as a mortgage only. As to the improvidence alleged, he held that the defendant had not taken undue advantage of plaintiff by reason of circumstances such as governed the decision in Slator v. Nolan, Ir. R. 11 Eq. 386, cited in Waters v. Donnelly, 9 O. R. at p. 401. The plaintiff was not at the time of the sale in "distress." She could not be charged with "wildness" or general "recklessness" or want of care. See Wallis v. Andrews, 16 Gr. 624; Evans v. Llewellan, 3 Cox 333; Fry v. Lane, 40 Ch. D. 312. There, no doubt, was undervalue here, but not so gross as in itself to amount to evidence of fraud.

Action dismissed without costs.

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OCTOBER 9TH, 1902.

C. A.

## SAWERS v. CITY OF TORONTO.

*Assessment and Taxes—Distress—"Owner"—Agreement for Purchase—Part Performance—Local Improvement Rates—Abandonment of Distress.*

Appeal by plaintiff from judgment of BOYD, C., dismissing action for illegal distress for taxes. The facts are stated in the judgment appealed against, 2 O. L. R. 717.

J. W. McCullough and S. W. McKeown, for plaintiff.

J. S. Fullerton, K.C., and W. C. Chisholm, for defendants.

On the 19th September, 1902, the Court intimated that the appeal was dismissed.

On the 9th October the opinion of the Court (OSLER, MACLENNAN, MOSS, GARROW, JJ.A.) was delivered by

GARROW, J.A.:—The Chancellor has seen fit, with, I think, probability at least on his side, to accept defendants' version, and to hold that there was no abandonment. We certainly ought not to reverse that conclusion.

Upon the other leading question, namely, whether plaintiff was an "owner," within the meaning of the Assessment Act, I have, after some doubt, come to the conclusion that the judgment appealed against is right in holding that he was an "owner," and not merely a tenant or occupant; and this is, of course, decisive of the action, because, if he was an "owner," his goods and chattels on the assessed premises were liable to seizure for the unpaid taxes, whether his