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H. C. J.
1912

MEMO. DECISIONS.

HARRISON v. KNOWLES.

Ontario High Court, Cartwright, M.C. February 13, 1912.

COSTS (§ I—14)—*Property in Jurisdiction — Onus.*]—Motion by the plaintiff to set aside a præcipe order for security for costs. The motion was based on the ground that the plaintiff had adequate assets in the jurisdiction. It was supported only by the affidavit of the plaintiff's solicitor, which stated that the action was on promissory notes given for the purchase of an automatic lithographing press, said to be worth at least $1,000. The defendant by his affidavit admitted that the notes given in payment were overdue, but stated that they had not been paid because the machine was not complete and was not, and, in his opinion, never would be, able to do the work which it was warranted to do. It was also subject to the usual lien agreement, which the defendant conceded gave the right to the plaintiff to retake possession at any time and to remove out of the province. The Master said that the onus was on the applicant, and he did not think it was satisfied. A chattel of that kind, in such a doubtful state of efficiency, could not be held to satisfy the conditions in Bready v. Robertson, 14 P.R. 7; Feaster v. Cooney, 15 P.R. 290; Daniel v. Birkbeck Loan and Savings Co., 5 O.W.R. 757. Motion dismissed with costs to the defendant in the cause. O. H. King, for the plaintiff. S. G. Crowell, for the defendant.

BANK OF OTTAWA v. BRADFIELD.

Ontario High Court, Sutherland, J. February 13, 1912.

BILLS AND NOTES (§ III B—63)—*Accommodation Indorsement—Mental Condition of Indorser—Inability to Appreciate Transaction—Knowledge of Holders of Notes—Fraud and Undue Influence of Maker of Notes—Counterclaim—Moneys Applied by Bank on Indebtedness of Maker—Evidence.*]—Action for the balance due upon two promissory notes indorsed by the defendant for the accommodation of his son. The defendant was represented by a guardian ad litem appointed by the Court. In the statement of defence it was alleged that, if the defendant did at any time indorse the promissory notes sued on, he was, at the time he so indorsed, of unsound mind and incapable of making any contract or understanding the nature of what he was doing, as the plaintiffs well knew. The defendant counterclaimed for moneys deposited by him with the plaintiffs which he alleged was wrongfully applied by the plaintiffs towards the payment of notes made by his son. The learned Judge, after setting out the facts at length, and referring to portions of the evidence, said that he had come to the conclusion, upon the evidence, that the defendant had been failing mentally for some