

THE  
ONTARIO WEEKLY REPORTER

VOL. 25

TORONTO, JANUARY 22, 1914.

NO. 10

HON. MR. JUSTICE LENNOX.

DECEMBER 22ND, 1913.

MAHER v. ROBERTS.

5 O. W. N. 603.

*Assignments and Preferences—Chattel Mortgage—Attack on—Loan to Enable Creditor to be Repaid—Lack of Knowledge of Insolvency—Bona Fides—Evidence—Action by Assignee for Benefit of Creditors—Dismissal of.*

LENNOX, J., held, that a chattel mortgage taken to secure a loan made at the instigation of a bank manager to an insolvent firm to enable them to repay a loan to the bank which the bank would not have sanctioned, was unimpeachable by the assignee for the benefit of creditors where the loan was made in good faith and without knowledge or suspicion of insolvency.

*Burns v. Wilson*, 28 S. C. R. 207, and *Allan v. McLean*, 8 O. W. R. 223, 761, distinguished.

Action by the assignee for the benefit of creditors of Chisholm and Morley to set aside a chattel mortgage made by the firm to the defendant as preferential and void.

F. M. Field, K.C., and J. B. McColl, for plaintiff.

E. E. A. DuVernet, K.C., and W. F. Kerr, for defendant.

HON. MR. JUSTICE LENNOX:—Was this mortgage, so far as the defendant is concerned, taken by way of security for “a present actual *bona fide* advance in money”? I think it was. Of course, I can properly reach this conclusion only if the facts in this case are clearly distinguishable in substance and effect from the facts founding the judgments in *Burns v. Wilson* (1897), 28 S. C. R. 207, and *Allan v. McLean* (1906), 8 O. W. R. 223—in appeal at p. 761—and I think they are.

Mr. Hargraff, the bank manager, gave his evidence in a frank, unhesitating way and I accept his account and statements as trustworthy. I am satisfied that when he placed