

If the view I have expressed as to the nature and effect of the agreement in question is correct, it follows that, the action for specific performance having been dismissed and the agreement with Jacques having been set aside, this action should also have been dismissed.

I would, therefore, allow the appeal with costs and substitute for the judgment pronounced by the learned trial Judge judgment dismissing the action with costs.

HON. MR. JUSTICE LENNOX.

MARCH 11TH, 1914.

BINGEMAN v. KLIPPERT.

6 O. W. N. 85.

Assignments and Preferences—Assignment of Policy of Life Insurance to Sister—Bona Fide Cash Advance—Lack of Knowledge of Creditor's Claim—Evidence—Findings of Fact—Lack of Fraud—Issue between Assignee and Execution Creditor—Costs.

LENNOX, J., dismissed an action by an execution creditor to set aside an assignment of the proceeds of an insurance policy upon the debtor's life, holding that there was an absence of fraud or of knowledge or notice of creditor's claims.

An issue to determine the ownership of \$980 paid into Court by the Mutual Life Assurance Company of Canada.

The plaintiff claimed to be entitled to the money as an execution creditor of Hannah Boehmer; and the defendant claimed it under an assignment from Hannah Boehmer, her sister.

W. H. Gregory, for plaintiff.

E. P. Clement, K.C., for defendant.

HON. MR. JUSTICE LENNOX:—Mr. Gregory presented his case with marked ability and earnestness, but the evidence does not establish that the assignment to the defendant was a colourable transaction or that she acted in bad faith. I judge the defendant to be a truthful, honest woman, and feel satisfied that she gave a truthful, and substantially accurate, account of the transaction down to and including the payment over of the \$1,000 to her sister Mrs. Boehmer and the subsequent handing of \$750 of this money to her, by her sister, for safe keeping. Mrs. Boehmer's evidence is certainly trustworthy in every way and she corroborates the