

Neither does the evidence satisfactorily establish that this security was given pursuant to any valid and enforceable pre-existing agreement. . . . The winding-up of the estate, which should have taken place upon the youngest beneficiary attaining her majority, in September, 1904, had been deferred, the defendants state, owing to the absence from home of John Beamish. How much longer Barnet Beamish would have remained a creditor, unpaid and unsecured, had not the news of plaintiff's verdict operated as an incentive to action, is extremely problematical. Barnet Beamish, according to his own testimony, did not know where John was between August, 1904, and 13th January, 1905. Not until aroused by hearing of the plaintiff's recovery did he trouble to inquire or take any steps to ascertain his brother's whereabouts. On that day, however, he not only succeeded in promptly locating him, but brought him immediately from Ottawa to Perth, and had him execute on his arrival the mortgage in question.

This action was brought within 60 days after this impeached mortgage was given. Against plaintiff it is "presumed prima facie to have been made" with intent "to defeat, hinder, delay, or prejudice" him in enforcing his rights as a creditor, and "to be an unjust preference." (R. S. O. 1897 ch. 147, sec. 2.) The onus of rebutting this presumption is on defendants—and that burden they have, in my opinion, failed to satisfy.

Counsel for defendants directed my attention to the provisions of Con. Rules 1015 and 1016, and asked that, if plaintiff should succeed and be awarded costs, such costs should be limited in amount to what would have been properly incurred had plaintiff, instead of bringing action, taken summary proceedings under these Rules.

In my opinion, the circumstances of this case justified the procedure which plaintiff adopted. It has, moreover, entailed little, if any, greater expense than would have been necessary in order to effectively prosecute plaintiff's rights under the Rules cited. It is, I think, very doubtful whether proceedings under these Rules could have been made equally effective.

Judgment will be therefore entered for plaintiff declaring fraudulent and void and setting aside the mortgage in question as against him, and for his costs of this action.