

whether the conclusion arrived at was one which this Court should adopt.

But suspicion was not proof, and it was almost impossible, where the issues raised involved the moral character of the actors in the transaction, and where they had given essential evidence which the Judge had accepted, to refuse to give effect to his view.

These considerations did not go far enough, however, to require the Court to hold that, in giving judgment for the defendant, the trial Judge took the mortgage account. There were in it four items which were necessarily discussed in the endeavour to discredit the respondent's whole story. One was an advance made when the mortgage was said to be executed, and as to it there was only the evidence of the respondent. The three others were, in a measure, corroborated, if the receipt was proved, because it shewed that notes for these sums were then given up. But one of them depended in the end on the sole evidence of the respondent, who alleged a payment to an estate on behalf of the deceased mortgagor, which was not shewn to have been made. The third payment was money advanced, it was said, for the specific purpose of removing an incumbrance, which was not paid off.

While, therefore, the judgment should stand affirmed, the respondent must prove his mortgage account; and, for that purpose, the judgment must be varied so as to provide a reference to ascertain the amount advanced upon and due under the mortgages, to the Master at Belleville, and to take the mortgage account. In this respect, the judgment appealed from was not to be regarded either as *prima facie* or conclusive evidence.

No costs of appeal.

FIRST DIVISIONAL COURT.

SEPTEMBER 28TH, 1916.

SEAGRAM v. HALBERSTADT.

*Trusts and Trustees—Conveyance of Land—Alleged Trust for Execution Debtor—Action by Execution Creditors for Declaration—Evidence—Bona Fide Sale for Value—Findings of Fact of Trial Judge—Appeal.*

Appeal by the plaintiffs from the judgment of SUTHERLAND, J., 10 O.W.N. 308.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.