

THE COURT (MULOCK, C.J., MACLAREN, J.A., CLUTE, J.), dismissed the appeal with costs.

MARCH 19TH, 1906.

TRIAL.

ROBINSON v. MCGILLIVRAY.

Bankruptcy and Insolvency—Preferential Transfer of Cheque—Deposit with Private Banker—Application by Banker upon Overdue Note—Set-off—Absence of Pre-arrangement.

Appeal by plaintiffs from judgment of FALCONBRIDGE, C.J., dismissing with costs an action brought to set aside an alleged preferential transfer by defendant McGillivray to defendants Scott & Son.

Defendant McGillivray was a merchant carrying on a small general store in the town of Listowel; he kept his account with defendants Scott & Son, private bankers at Listowel, whose office was next door to him. McGillivray had borrowed \$1,000 from Scott & Son in 1891, upon his note, which had been renewed several times until March or April, 1904, when it matured, and was not renewed but remained overdue in the hands of Scott & Son, neither principal nor interest being paid. Besides this, he owed plaintiffs, Robinson, Little, & Co., wholesale merchants in London, for goods supplied him, \$1,000, part of which had been overdue for more than a year, and the rest not so long; he also owed John Macdonald & Co. \$85.94, and George Watt & Son \$82. He had no book debts due him; he owned the stock in his store, which was an old stock composed principally of remnants of bankrupt stocks he had bought. He had no other property but an equity of redemption in his store, subject to a mortgage for \$2,050, and in his house subject to a mortgage for \$1,000. The store was sold under the mortgage to Mr. Scott, one of the defendants, shortly after the impeached transaction, for the mortgage money, and the house has proved to be unsaleable.

On 5th September, 1904, plaintiffs, with the knowledge of Scott & Son, sold out his stock in trade to one Grant at 50 cents in the dollar; and received in payment Grant's cheque on Scott & Son's bank for \$1,172.27, payable to his