

STREET, J.

APRIL 12TH, 1905.

TRIAL.

CASSERLEY v. HUGHES.

Bankruptcy and Insolvency—Conveyance by Insolvent to Creditor — Action by Assignee for Creditors to Set aside—Grantee's Ignorance of Insolvency—Security for Debt—Wages—Interest—Redemption—Costs.

Action by the assignee for creditors of George P. Hughes to set aside a conveyance of land by the latter to his daughter, defendant Georgiana K. Hughes, as fraudulent and preferential.

C. E. Hewson, K.C., and A. E. H. Creswicke, Barrie, for plaintiff.

H. Lennox, Barrie, for defendant.

STREET, J.:—I . . . find that George P. Hughes, was insolvent on 9th April, 1896, when the conveyance to his daughter . . . was made, and that he knew he was insolvent, and made the conveyance . . . in order to withdraw the property . . . from the reach of his creditors. It is true that the fact of his insolvency cannot be actually demonstrated by an examination of his books, because the books are so kept as to render it impossible to ascertain his true financial position at that time. But when he stopped payment in November, 1903, he was insolvent in a very large amount, and has failed satisfactorily to shew how he can have lost so much money in the interval. I think, however, that there is nothing to shew that defendant Georgiana K. Hughes was at any time aware of his insolvency; she worked diligently for him for many years; her wages were regularly credited to her; and she was clearly a creditor of his and entitled to be paid what was due her. She did not ask for security for her debt, but she was aware that it was given to her, and she accepted it and continued afterwards for more than 7 years to work for her father at stipulated wages, which were credited to her. I think I must hold that the conveyance to her was intended merely as a security, and not as an absolute conveyance, for she allowed her father to receive and retain the rents as they came due.