

for disposition by the Taxing Officer on final taxation. H. E. Rose, K.C., for the applicants. W. Laidlaw, K.C., for the plaintiffs.

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PALANGIO V. AUGUSTINO—BRITTON, J.—Nov. 29.

*Fraudulent Conveyance—Action to Set aside—Insolvency of Grantor—Intent to Defraud on Part of Grantor—Failure to Shew Knowledge of Insolvency or Intent to Defraud on Part of Grantee.*—The defendant Dominique Augustino was on the 9th June, 1913, the registered owner of two lots in the town of Cochrane. He was indebted to the plaintiff for money lent and goods sold; and on that day an account was stated between them, and Dominique promised to give the plaintiff a mortgage upon the two lots as security for the debt. Later, Dominique refused to execute a mortgage. On the 5th August, 1913, the plaintiff sued Dominique, and on the 21st November, 1913, recovered judgment for \$455.70 debt and \$252.10 costs. On the 19th September, 1913, the defendant Rosa Augustino, wife of Dominique, lodged a caution in the Land Titles office claiming ownership of the two lots by virtue of an alleged transfer from her husband dated the 17th July, 1913. On the 31st October, 1913, the defendant Paccicco lodged a caution alleging a transfer by way of mortgage to him from Dominique. The plaintiff, having an unsatisfied execution against the goods and lands of Dominique in the hands of the proper sheriff, brought this action to set aside the transfer to Paccicco, alleging that Dominique was at the time of the transfer in insolvent circumstances and unable to pay his debts in full, and that the transfer was made with intent to defeat, delay, and hinder the plaintiff in the recovery of his debt. The action was tried without a jury. The learned Judge finds, upon the evidence, that the allegations of the plaintiff as to the insolvency and intent of Dominique are proved. He holds, however, that fraudulent intent on the part of Paccicco must be shewn as well. This action was not commenced until several months after the transfer; and, therefore, there was no presumption against the transfer. To set the transfer aside, there must have been knowledge on Paccicco's part of the insolvency of Dominique, and there must have been concurrent intention on the part of Dominique and Paccicco to defeat, delay, or hinder the plaintiff or the creditors generally in the recovery of his or their claims. The evidence was lack-