

HIGH COURT DIVISION.

CLUTE, J.

FEBRUARY 8TH, 1915.

DAVIDSON v. FORSYTHE.

Fraudulent Conveyance—Action by Judgment Creditor to Set aside—Evidence—Absence of Intent to Defraud—Estoppel—Unregistered Reconveyance to Debtor—Cancellation—Dismissal of Action.

Action by the plaintiff, as a judgment creditor of William L. Cheeseworth, deceased, for a declaration that certain land conveyed by one Armstrong to the defendant James Forsythe was in fact purchased by the deceased and was conveyed to Forsythe with intent to defraud the creditors of the deceased, and for relief by way of equitable execution against the land.

The action was tried without a jury at Toronto on the 13th and 14th January, 1915.

J. T. White, for the plaintiff.

J. C. McRuer, for the defendants.

CLUTE, J.:—The plaintiff brings this action as a creditor of the late William L. Cheeseworth, and sues the defendant James Forsythe, and Mary Forsythe, administratrix of the estate of William L. Cheeseworth. The claim of the plaintiff arose out of a suit, and is for costs. At the time the transaction impugned took place the plaintiff had succeeded in an action in the Court below, but an appeal was made, and judgment had not yet been given. Subsequent to the transaction complained of . . . the costs were taxed, and it is upon these costs that the plaintiff claims as creditor.

I find as a fact that the defendants in the transaction were not guilty of any fraud; that the transfer of the land from Armstrong to the defendant James Forsythe was for a valuable consideration, and bona fide; and that at that time they had no knowledge of any indebtedness of any kind, or any outstanding debts against William L. Cheeseworth. In the purchase of this land, \$700 was advanced by Cheeseworth, and it is now contended that, to that extent at all events, the land should be held responsible to his creditors.

I find as a fact that Cheeseworth was indebted to the defendants for his board and lodging, and for moneys paid by them