McRAE v. WHITE.

Insolvent Act of 1875—Unjust preference—Fraudulent preference—Presumption of innocence.

This was an appeal from a judgment of the Court of Appeal for Ontario reversing the decree of the Court of Chancery, which declared a mortgage, executed by one Depew in favor of respondent White, void as being an unjust preference of White over the other creditors of Depew, and ordering White to pay over to appellant, as assignee in insolvency of Depew, the sum of $465.

Respondent White was a private banker who had, previously to the execution of the mortgage in question, had various dealings with Depew, and had discounted for him, at an exorbitant rate of interest, notes received by Depew in the course of his business. At the time of this transaction, Depew, being a man of a very sanguine temperament, had entered into a new line of business after obtaining goods on credit to the amount of $4,000 or $5,000, having represented to the parties supplying such goods that, although without any available capital, he had experience in business. About twelve days after he had commenced his new business, being threatened by a mortgagee with foreclosure proceedings, he applied to respondent, who advanced him $300, part of which was applied in paying the over-due interest on the mortgage, and the surplus in retiring a note of Depew's held by respondent.

Depew was granted a reduced rate of interest on his indebtedness to respondent, and was told he would have to work carefully to get through. Depew became insolvent about four months afterwards. In a suit impeaching the mortgage to the defendant, it was

Held, (affirming the judgment of the Court of Appeal for Ontario) that the plaintiff had not satisfied the onus which was cast upon him by the Insolvent Act, of shewing that the insolvent at the time contemplated that his embarrassments must of necessity terminate in insolvency, and that with a view to that end he had granted the mortgage in question.

Robinson, Q.C., and *MacDonald* for the appellant.

Gibbons for the respondent.

Appeal dismissed with costs.

QUEEN'S BENCH DIVISION.

In Banco.] [June 30.

GIBSON v. MIDLAND RY. CO.

Railway—Overhead bridge—Death therefrom—Illegitimate son—44 Vict. ch. 22.

The plaintiff as administratrix of, sued the defendants, under 44 Vict. ch. 22, sect. 7 O., for the death of her illegitimate son, a brakesman on the defendants' railway, who was killed by being carried against a bridge not of the height required by that Act, while on one of their trains passing underneath it. The bridge belonged to another railway company, who had the right to cross the defendants' line in that way; and though the time allowed by the statute for raising the bridge had expired, they had not done so. The jury found that the defendants had been guilty of negligence in not raising, or procuring to be raised, the bridge.

Held, that the plaintiff was not entitled to recover, (i.) because section 7 of the Act applies only to bridges within the control of the company whose servant has been injured; and (ii.) the Act was intended to give no greater right to recover than Lord Campbell's Act, and therefore the plaintiff's relationship to the deceased prevented her recovering.

MOORE v. CENTRAL, ETC., R. CO.

Railway Co.—Notice requiring lands—Notice of desistment.

Held, that a railway company having desisted once from their notice to take land, given under R. S. O. ch. 165, sect. 20, could not again desist pending an arbitration proceeding under a second notice.

The company's arbitrator having withdrawn from such arbitration in deference to a notice of desistment given by the company, after the amount to be awarded had been agreed upon by the other two,