

such interest being worth about \$566. On the same day the trial Judge directed judgment to be entered upon that verdict. On 13th January defendant John Beamish mortgaged his interest in the farm to his brother and co-defendant, Barnet Beamish, for \$635.

This action, commenced on 31st January, was brought to set aside the mortgage as fraudulent and void as against plaintiff.

J. P. Mabee, K.C., and W. McCue, Smith's Falls, for plaintiff.

J. A. Hutcheson, K.C., and F. W. Hall, Perth, for defendant Barnet Beamish.

J. M. Hall, Ottawa, for defendant John Beamish.

ANGLIN, J.:—The only witnesses examined were defendant Barnet Beamish, called for plaintiff, and defendant John Beamish, called on his own behalf. For defendants it is contended that the evidence does not establish an intent to defraud, and that a pre-existing agreement to give the mortgage rebuts any intention to afford to the mortgagee an undue preference. I assume that there was an indebtedness of John Beamish to his brother Barnet. How much of that which defendant Barnet Beamish claimed to be due to him, was a bona fide liability of John, the evidence left in doubt. But upon these points it seems unnecessary for me to make explicit findings. I was, however, satisfied by the testimony and demeanour of defendants—considered in the light of the circumstances surrounding the impeached transaction—that the allegation of a further advance or assumption of liability by Barnet Beamish at the time of and as consideration for the giving of the mortgage is untrue, and that what is put forward to make good this defence is, as a present consideration, merely pretended and colourable.

I am convinced that both defendants knew of the insolvent condition of John Beamish, and were aware of plaintiff's judgment when the mortgage was given, and that they were prompted to carry out the mortgage transaction, when they did, because of such knowledge. They fully appreciated the effect of what they did upon plaintiff's chances of recovery. They both intended that defendant Barnet Beamish should absorb the entire available assets of John Beamish, leaving nothing to satisfy the claim of the judgment creditor.