

Action by McCowan, on behalf of himself and all other creditors of James Jermyn, deceased, against the widow of James Jermyn, to set aside a conveyance of land made to her by her husband in June, 1916, about 14 months before his death.

The action was tried without a jury at a Toronto sittings.
T. Herbert Lennox, K.C., and R. Lieberman, for the plaintiff.
I. F. Hellmuth, K.C., and J. Callaghan, for the defendant.

LENNOX, J., in a written judgment, said that the principal creditors of the deceased were the plaintiff, Laura Jermyn (sister-in-law of the deceased), and the Imperial Bank of Canada. The indebtedness of the deceased to these creditors existed at the date of the conveyance; he had been, was then, and proposed to continue to be, engaged in the admittedly hazardous business of a dealer in speculative stocks; that was his only occupation; he had already sustained serious losses—so serious and repeated as to cause anxiety to himself and the defendant; the debts referred to were of long standing and overdue; his operations were being, and had been, to the knowledge of his wife, carried on upon borrowed money; and, upon the undisputed evidence, the avowed object and common purpose of both the grantor and grantee was to secure the property conveyed for the defendant and put it beyond the reach of creditors.

There was a previous conveyance from the husband to the wife of a life-interest in the same property, dated and registered on the 1st February, 1907. That conveyance was not attacked in this action.

The learned Judge was of opinion that the conveyance of a life-estate was all that was arranged for or contemplated by the husband and wife in the first place, and that the ultimate conveyance of the fee was a distinct arrangement, born of subsequent misfortunes, tentatively entered into about the 27th June, 1916, and not definitely determined upon or consummated until, to the knowledge of both parties, the position of the husband had become financially hopeless, to wit, on or about the 22nd December, 1916, when the attacked conveyance was registered. The defendant had, when the first conveyance was made, and thereafter until the husband's death, a fair knowledge and understanding of his transactions and financial position, and a thorough comprehension of the hazards of the speculative business he was engaged in. As to imputed knowledge in such cases, see *Thompson v. Gore* (1886), 12 O.R. 651.

The learned judge cited and quoted from the reports of many decided cases, and referred specially to *Ferguson v. Kenny* (1889), 16 A.R. 276, 291, 292.