

McNAIRN v. GOODMAN—CLUTE, J.—JULY 14.

Fraudulent Conveyance—Action to Set aside—Evidence—Findings of Fact of Trial Judge—Intent—Knowledge of Grantee—Claims of Creditors—Costs—Interest—Oppressive Bargain.]—Action to recover from the defendants Gabriel Goodman, Samuel Lichman, and Annie Lichman, \$5,579.01, being the amount due upon a certain mortgage made by the Lichmans on the 15th October, 1913, to Gabriel Goodman, and assigned by Goodman to the plaintiff on the 17th February, 1914; Goodman guaranteeing payment thereof. This part of the claim was not disputed. The plaintiff further alleged that a certain grant and transfer by Gabriel Goodman to the defendant Rachael Goodman, his wife, without consideration, dated the 1st December, 1914, of a half interest in certain land, was illegal, fraudulent, and void as against the plaintiff and other creditors of Goodman, and asked an injunction restraining the defendants the Goodmans from transferring or incumbering the same. The action was tried without a jury at Toronto. CLUTE J., in a written judgment, after setting out the facts, found that the deed of the 1st December, 1914, was voluntary, wrongful, illegal, and fraudulent as against the plaintiff and other creditors of the defendant Gabriel Goodman—the plaintiff suing on behalf of all other creditors as well as himself; also, that the defendant Rachael Goodman had knowledge of the financial condition of her husband's business, and knew that the effect of the conveyance would be to hinder, defeat, and delay the plaintiff and other creditors of her husband in the recovery of their claims against him, and that the conveyance was made by the husband for that express purpose, with her knowledge and consent. The plaintiff should have judgment declaring the deed void and consequent relief. As to costs, the plaintiff charged 15 per cent. for the money he advanced to Gabriel Goodman; that was harsh and oppressive conduct; and the plaintiff should be deprived of his costs of the action. This ruling was without prejudice to creditors or others disputing any claim which the plaintiff might make for interest in the distribution of the proceeds of the property among the creditors of Gabriel Goodman. But, the plaintiff now undertaking not to claim more than 6 per cent. interest, he is to have costs against the defendant Gabriel Goodman, the said costs to be a first claim against that defendant's interest in the land. G. H. Watson, K.C., for the plaintiff. R. McKay, K.C., for the defendant Rachael Goodman. A. Singer, for the defendant Gabriel Goodman. The other defendants did not appear.