

That the statutory presumption against the chattel mortgage may be rebutted, even if Wilson were insolvent, by shewing that it was given in good faith and without knowledge or notice to the respondent of the insolvency, was decided by the Court of Appeal in *Dana v. McLean*, 2 O. L. R. 466.

The appeal, in my opinion, fails and must be dismissed with costs.

MAY 3RD, 1902.

DIVISIONAL COURT.

PIMPERTON v. MCKENZIE.

Negligence—Injuries Caused by—Liability for—Duty—Volunteer.

Motion by plaintiff to set aside nonsuit entered by FALCONBRIDGE, C.J., and for a new trial in action by administratrix of estate and mother of Maurice Pimperton, deceased, to recover damages for his death. The defendant is lessee of a wharf adjoining the basin of the Rideau canal in the town of Smith's Falls, and uses a derrick erected for the purpose of unloading boats filled with coal, to be used by defendant in his business as a coal merchant. On 15th May, 1901, plaintiff's son came upon the wharf to help unload sand from a barge, whose captain had paid \$5 for the use of the wharf, when, owing, as alleged, to the negligent construction and negligent staying and management of the derrick, by the defendant, who assumed it as a volunteer, the derrick overbalanced and fell upon the plaintiff's son and instantly killed him. The derrick was sustained by guy ropes, and defendant, it is alleged, did not fasten one securely, which was untied to enable the boom to be turned to the south. The Chief Justice distinguished this case from *Collier v. M. C. R. Co.*, 27 A. R. 630, and withdrew the case from the jury at the close of the evidence on behalf of plaintiff, on the ground, that where one person charges negligence against another, the basis of the action must lie in some duty which was due by the defendant to the plaintiff; that in this case defendant had nothing to do with the unloading of the vessel, the sand was not for him, and he had not assumed any duty, but was acting as a mere volunteer.

G. H. Watson, K.C., for plaintiff.

A. B. Aylesworth, K.C., for defendant.

The judgment of the Court (MEREDITH, C.J., LOUNT, J.) was delivered by

MEREDITH, C.J.—Having regard to the arrangement as to the use of the derrick and boom, which cast no duty upon the respondent as to the placing of them in position for use,