

The only allegation in any of the papers suggesting that the conveyances are void is contained in the notice of motion. The order recites that defendant and his grantee, Rachel H. Ryan, have not "disputed plaintiff's allegations in the notice of motion contained or shewn cause," etc., and then proceeds to declare the conveyances "null and void as against the plaintiff," etc.

Counsel for defendant and the grantee appeared and objected to the sufficiency of the material, also to the jurisdiction of the local Judge to entertain the application, on the ground that the parties had not agreed to his doing so, and because the solicitor for defendant and grantee did not reside in the district, as provided in Rule 1242.

I am of opinion that both objections are well taken. I am not furnished with any reasons given by the Judge in support of the order, but plaintiff's counsel seems to have taken the view that the onus was upon defendant and the grantee to affirmatively support the conveyances without any evidence being first offered by plaintiff impeaching their validity . . . Before the Administration of Justice Act, 1873, which made first provision for summary proceedings to set aside fraudulent conveyances, a suit in Chancery was necessary, in which, as in any other action, plaintiff had to prove his case; and there is nothing in the present Rules which shifts that burden.

Appeal allowed, and order set aside, with costs to be paid by plaintiff.

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TEETZEL, J.

APRIL 22ND, 1905.

WEEKLY COURT.

RANDALL v. BERLIN SHIRT AND COLLAR CO.

*Mortgage—Assignment—Proof of Claim—Affidavit of Assignee—Onus—Discovery of New Evidence.*

Appeal by defendant Wade, made a party in the Master's office, in a mortgage action, from report of Master at Berlin, and alternative motion to refer back to the Master to take further evidence.

A. C. McMaster, for defendant Wade.

W. Davidson, for plaintiffs.