

of good faith, and ascertaining the real meaning and purpose of what was done on the 14th November. I am satisfied that when Morley, at about this time, gave the bank manager a summary of the firm's financial position, shewing a substantial surplus, he acted in good faith, believing what he stated to be true; and that the mortgage was not executed with an actual intent of preferring or benefiting the bank, but solely for the purpose of extricating Mr. Hargraft from an awkward predicament, for which Morley, very properly, felt himself responsible. The result is, that the bank neither stands to win nor lose by the decision in this case. Its money was let out without its consent, it was repaid without effort or action upon its part. If the mortgage is void, the loss falls upon the mortgagee, if he is worth it; if he is not, the loss, of necessity, falls upon his creditor. The sole purpose of Mr. Hargraft was to avert personal disaster. Was his action, and the acts of those whom he set in motion, justifiable and legal as against the creditors of Chisholm & Morley? I think what was done was lawful and right. I refused at the trial to add the bank as a party unless an opportunity was given to defend. The application was renewed upon the argument. I adhered to the view I first expressed; and, in addition, upon the evidence, can see no purpose in bringing them in.

There will be judgment dismissing the action with costs.

Gibbons v. Wilson (1890), 17 A.R. 1, Ashley v. Brown (1890), 17 A.R. 500, Davies v. Gillard (1891), 21 O.R. 431, Molsons Bank v. Halter (1890), 18 S.C.R. 88, and Campbell v. Patterson (1892), 21 S.C.R. 645, may be referred to.

Boyd, C.

DECEMBER 23RD, 1913.

CROFT v. McKECHNIE.

Mortgage—Sale under Power in First Mortgage—Purchase by Second Mortgagee—Action by Purchaser against Mortgagor on Covenant for Payment—Right of Mortgagor to Redeem—Admission—Onus—Judgment—Motion to Vary Minutes—Costs.

Motion by the plaintiff to vary the minutes of a judgment as settled.

J. P. Ebbs, for the plaintiff.

J. I. MacCraken, for the defendant.