

ADAMS & BURNS *v.* THE BANK OF MONTREAL.

1900

Debtor and creditor—Preference—Collusion—Pressure—R. S. B. C. (1897) cc. 86, 87—Statute of Elizabeth—The Bank Act, s. 80—Company law—Mortgage by directors—Ratification—B. C. Companies Acts, 1890, 1892 & 1894.

*May 18,
19, 21.

1901

*Feb. 19.

Judgment appeal from (8 B. C. Rep. 314) affirmed, Gwynne J. taking no part.

APPEAL from the judgment of the Supreme Court of British Columbia, (2) affirming the judgment of the trial court (Martin J.) dismissing the plaintiffs' action with costs.

The action was to set aside a mortgage by the Kootenay Brewing, Malting and Distilling Company to the bank, an assignment of book debts by the company to the bank and a judgment recovered by the bank against the company, on the grounds that (1) the mortgage was voluntary, fraudulent and void under the Statute of Elizabeth; (2) that it was void as a fraudulent preference; (3) that it had not been executed in accordance with the provisions of the Companies Act; (4) that the assignment of debts was void for the

*PRESENT :—Sir Henry Strong C.J. and Taschereau, Gwynne, Sedgewick and Girouard JJ.

(1) 2 E. & B. 678.

(2) 8 B. C. Rep. 314.

1901
 ADAMS
 v.
 BANK OF
 MONTREAL.

same reasons, and also as being in contravention of the Bank Act; (5) that the judgment was voluntary, fraudulent and void under the Statute of Elizabeth; and it was contended that the moneys received by the bank on sale of the assets and collections of the book debts were exigible under the executions of the plaintiffs. An order was claimed against the bank for the payment of the amount to be levied under the executions.

The courts below held that as there was good consideration for the mortgage and, as it was given under pressure, that it should not be set aside, although it comprised the whole of the debtor's property and was given at a time that the mortgagor was in insolvent circumstances to the knowledge of the mortgagee and that the mortgage had the effect of depriving other creditors of their remedy. It was also held that the mortgage, which had been made by the directors without proper authority, had been legally ratified by a subsequent resolution of the shareholders of the company. The plaintiffs appealed.

After hearing counsel for the parties the court reserved judgment and on a subsequent day dismissed the appeal with costs. His Lordship Mr. Justice Gwynne took no part in the judgment.

Appeal dismissed with costs (1).

A. C. Galt for the appellants.

C. R. Hamilton for the respondent.

(1) Leave to appeal to the Privy Council was refused, (8 B. C. Rep. at p. 337).