

Full Court.]

GUNN v. VINEGRATSKY.

[March 3.]

*Fraudulent preference—Action by judgment creditor of grantor to set aside—Parties to action—Assignments Act, R.S.M. 1902—Knowledge of solicitor, when imputed to client.*

*Held*, 1. A judgment creditor has a right to bring an action to set aside a fraudulent preference given by the judgment debtor without setting up that his action is on behalf of all the creditors; and, if the action was commenced within sixty days after the date of the alleged fraudulent preference, the plaintiff is entitled to the benefit of the legal presumption created by s. 40 of R.S.M. 1902, c. 8, in such a case, viz., that a conveyance which has the effect of giving a preference over creditors or over one or more of them, shall be utterly void as against such creditor or creditors. *Ferguson v. Bryans*, 15 M.R. 170, distinguished.

2. Sub-sec. (b) of s. 48 of the Act, providing that one or more creditors may sue on behalf of all the creditors to set aside a fraudulent preference, has not taken away the right of a judgment creditor to sue on his own behalf.

3. When it is the duty of the solicitor of the alleged fraudulent grantee to divulge a fact as to the title, if he is aware of it, there is an irrebuttable presumption that he gave his client notice of that fact. *Rollond v. Hart*, L.R. 6 Ch. 678; *Real Estate v. Metropolitan*, 3 O.R., at p. 490, and *Schwartz v. Winkler*, 13 M.R. at p. 505, followed.

New trial ordered so that the question whether the defendant was entitled to the protection of s. 44 of the Act, by reason of having made "any present actual *bonâ fide* payment in money" might be determined.

*W. L. Garland*, for plaintiff. *F. M. Burbidge*, for defendant.

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DOMINION EXPRESS CO. v. CITY OF BRANDON.

*Taxation—Corporations Taxation Act—Business tax—Construction of statutes.*

Appeal from the judgment of Macdonald, J., noted vol. 46, p. 547, allowed with costs and this injunction be granted dissolved, the court holding that the business tax imposed by the city, being a tax based on the rental value of the premises occupied, was not a tax similar to that imposed by the Corporation Taxation Act, R.S.M. 1902, c. 164, s. 3 (m).

*Coyne*, for plaintiff. *Henderson*, K.C., for defendants.