

*Held*, further, that inasmuch as defendant did not appear to show cause against the original order, before the judge at chambers, but stood by until the attachment proceedings were taken, he was not entitled to costs.

*W. B. A. Ritchie*, Q.C., for plaintiff. *W. H. Fulton*, for defendant.

Full Court.]

FULTON v. KINGSTON VEHICLE CO.

[Jan. 11.

*Assignment executed under threat of criminal prosecution—Upheld as between original parties where there was a debt actually due—Case of third party distinguishable—Threat to do that which may lawfully be done not duress.*

Plaintiffs sought to set aside an assignment and confession of judgment given by plaintiff to defendant company on the ground that they were executed in consequence of a threat of criminal prosecution. It was shown that the defendant company had considered the question of plaintiff's arrest, and that a warrant was actually issued for that purpose, and that proceedings would have been taken in the event of his refusal to execute the documents required of him, but the jury found among other things that there was no agreement, express or implied, on the part of the company with plaintiff to abandon the criminal prosecution conditionally upon his giving the security demanded. The trial Judge, notwithstanding this finding, directed judgment to be entered for plaintiffs.

*Held*, 1. That he was wrong in so ordering, and that the judgment must be set aside with costs.

2. There being a debt actually due from F. to the defendant, that the security given was not invalidated by the fact that it was given in consequence of a threat to take criminal proceedings against him, there being at the same time no agreement on the part of defendant that if the security was given they would not prosecute.

3. That the case of a party seeking to evade payment of a debt actually due is distinguishable from the case of security given by a third party (*e.g.*, a relative) not a party to the original transaction.

4. That the threat made being only to do that which might lawfully be done there was no duress which would avoid the transaction.

*H. A. Lovett*, for appellant. *R. L. Borden*, Q.C., and *H. McKenzie*, for respondent.

Full Court.]

THE QUEEN v. GRANT.

[Jan 11.

*Liquor License Act—Third conviction—Power of magistrate to vary form prescribed—Amendment of summons in absence of defendant and without notice held bad—Costs.*

Defendant was convicted by a stipendiary magistrate of a third offence against the provisions of the Liquor License Act of 1895 and amending Acts, and was adjudged to pay a fine and costs, and, in default of payment, to be imprisoned for 90 days, and in addition to the term of imprisonment imposed in default of payment of the amount of the fine and costs, to be imprisoned for 50 days. A difficulty arose in connection with the carrying out of the punishment imposed, owing to the fact that neither of the forms of conviction