

The appellant was shewn by the evidence to have been a salaried clerk in the employ of one Truss, a licensed druggist, whom the convicting magistrate had previously refused to hold liable on the facts adduced in this case, by reason of his not having prepared or supplied in person the remedies applied for. The whole transaction was carried on by the appellant without the intervention of his employer.

Held, that, no profit inuring to him from the sale, the appellant could not be said to have practised medicine for "hire, gain, or hope of reward," and the conviction was, therefore, quashed.

Du Vernet, for appellant. *Curry, K.C.*, for respondent.

Province of Manitoba.

KING'S BENCH.

Killam, C.J.]

SCHWARTZ v. WINKLER.

[Oct. 15.

Fraudulent preference—Assignments Act, R. S. M. c. 7, s. 33—63 & 64 Vict. (M.) c. 3, s. 1—Trust assignment made to creditor—Pressure—Knowledge of insolvency.

The plaintiff was an assignee in trust for the creditors of W. and brought this action to have a mortgage of W.'s property given to the defendant shortly before the assignment set aside as creating an undue preference. Defendant having a large claim against W. and holding no security, asked for payment, and on being informed by W. that he had no money, asked for and obtained the mortgage in question without making any fresh advance to W. It was found as facts that W. was in insolvent circumstances at the time and knew himself to be so, and that defendant had such a knowledge of W.'s financial position that an ordinary business man would conclude from it that W. was unable to meet his liabilities.

Held, 1. Under section 33 of "The Assignments Act," R.S.M. c. 7, as amended by 63 & 64 Vict., c. 3, s. 1, the mortgage should be set aside as a preference although it may have been obtained by pressure from the defendant and given by W. without any active desire to prefer the defendant to his other creditors, for he knew that would be the result of giving the mortgage.

2. The plaintiff had a right to bring the action in his capacity as assignee in trust for creditors, under section 39 of the Act, although there was no evidence of the acceptance of the benefit of the assignment by any creditor except the plaintiff or even of communication of it to any other, as the assignee was a creditor himself: *Mackinnon v. Stewart*, 1 Sim. N. S. 76; *Siggers v. Evans*, 5 E. & B. 367.

3. An assignment of property made by a debtor for the benefit of his creditors generally is, by virtue of section 2 (a) of the Act, an "Assignment under this Act," although the description of the property may not be in the words set forth in section 3 or words to the like effect.