

LEARIE v. GAUDET—GAUDET v. LEARIE—FALCONBRIDGE, C.J.K.B.
—JULY 26.

Assignments and Preferences—Money Given by Husband to Wife to Purchase Land—Ante-nuptial Promise, not in Writing—Insolvency of Husband—Assignment for Benefit of Creditors—Action by Assignee to Bring Land into Estate of Husband—Absence of Fraudulent Intent.—The first action was brought by Thomas W. Learie, assignee for the benefit of creditors of the estate and effects of Fidele J. Gaudet, against Letitia Mary Gaudet, wife of the assignor, for a declaration that certain land conveyed to the defendant was purchased with the money (\$2,900) of her husband; that he was really the owner of it, and she a trustee for him; and for a conveyance or vesting order in favour of the plaintiff as assignee. The second action was brought by the wife against the assignee to recover \$1,775 said to have been lent by the wife to her husband. The actions were tried together without a jury at Sault Ste. Marie. FALCONBRIDGE, C.J.K.B., in a written judgment, said that the account given by the defendant of the transaction which was attacked in the first action was uncontradicted, and it was perfectly credible and reasonable. The gist of the action was the alleged intent to defeat or defraud creditors—and it had not been proved that there was such intent in the minds of either the defendant or her husband. The case was not at all on the lines of *McGuire v. Ottawa Wine Vaults Co.* (1913), 48 S.C.R. 44; *In re Butterworth* (1882), 19 Ch. D. 588; or *Alexandra Oil Co. v. Cook* (1909), 1 O.W.N. 22, 14 O.W.R. 604. This was not done with the intent of protecting the property from the claims of possible or probable creditors of a hazardous business. The business was not then in contemplation, and, when embarked on, it was a fairly prosperous one for about 5 years, i.e., until the war broke out. The \$2,900 in question was paid in pursuance of an ante-nuptial verbal promise. A writing is not necessary to rebut the charge of fraud: *Montgomery v. Corbit* (1896), 24 A.R. 311. Learie's action should be dismissed with costs. As to the action of Mrs. Gaudet, she was content, on getting judgment in her favour in the other case, to have her action dismissed without costs. If the finding had been against her in the other action, judgment would have been given in her favour in her action, with costs. J. Ewart Irving and U. McFadden, for Learie. J. L. O'Flynn, for Letitia Mary Gaudet.