

MARCH 4TH, 1903.

DIVISIONAL COURT.

## BURNETT v. BOCK.

*Fraudulent Conveyance—Status of Judgment Creditor Attacking—  
Execution not in Hands of Proper Sheriff—Nature of Transactions  
between Husband and Wife—Evidence—New Trial.*

Appeal by defendants (husband and wife) from the judgment of the District Court of Manitoulin in favour of plaintiff, a judgment creditor of the husband, but not having an execution against lands in the hands of the proper sheriff, in an action brought for the purpose of reaching for the satisfaction of plaintiff's debt a house and lot in Gore Bay which plaintiff alleged was purchased by and with the moneys of the husband, and was procured by him to be conveyed to his wife without consideration and for the purpose of defrauding his creditors.

A. G. Murray, Gore Bay, for defendants.

W. N. Tilley, for plaintiff.

The judgment of the Court (MEREDITH, C.J., FALCONBRIDGE, C.J.) was delivered by

MEREDITH, C.J.—As the respondent had not an execution against lands in the hands of the proper sheriff, his only right of action was, on behalf of himself and all other creditors of his debtor, to have the declaration necessary to enable the creditors to reach the property pronounced by the Court, and possibly to have a judgment for the sale of the property; and the judgment appealed against was erroneous in providing for payment of plaintiff's claim only.

Upon the main question, the alleged fraudulent character of the transaction by which the property was conveyed to the wife, the trial Judge has not given sufficient weight to independent and unimpeached testimony in favour of defendants. Order made directing a new trial. Costs of the last trial and of this appeal to be costs in the cause unless the Judge at the new trial otherwise directs. The Court expresses a hope that the parties will adjust their disputes and render a new trial unnecessary.