A new trial was granted, with leave to the plaintiff to amend his statement of claim—which stated that the defendants had charged the plaintiff with felony—so as to state the true facts, and so as to enable the question to be presented whether on such facts a legal cause of action arose.

The new trial was also granted because there seemed to be evidence to connect the defendants with the trespass.

Pepler, (of Barrie,) for the plaintiff.

Lount, Q.C., for the defendants.

CHANCERY DIVISION.

Wilson, C. J.; Proudfoot, J.] [June 22.

McGEE V. CAMPBELL.

Insolvency—Setting aside final order of discharge—Forum—Parties.

A certain firm having become insolvent, made an assignment under the Insolvent Acts on Sept. 16th, 1878. By a deed of composition and discharge made Oct. 2nd, 1878 the firm covenanted to pay their creditors 10 cents in the dollar, and on Feb. 28th., 1879, the firm applied to the County Court Judge for an order of confirmation thereof. The plaintiff in the present action was one of the creditors of the firm, and he refused to execute or be a party to the said deed; but on persuasion he consented to assign his claim to one Smith, who should hold the same as trustee for the firm, and for the mere purpose of signing the deed. Thus the composition was carried out, and the plaintiff received a certain sum from the firm. Smith gave no consideration for the assignment. The plaintiff afterwards, and long after the confirmation of discharge, discovered that the firm, in the statement of assets and liabilities filed by them with the assignee before the order of discharge, in pursuance of the Insolvent Acts, had failed to disclose certain railway stocks standing in the name of, and owned by the defendant Campbell, a member of the firm; and, also, certain other assets of the defendant Campbell. Thereupon the plaintiff filed this bill, declaring this withholding of assets was fraudulent, and submitting that the deed of composition and discharge was void as against him, and praying a declaration to this effect, and to the effect that he was a creditor of the said firm to the amount of his claim against them.

It appeared on the evidence that some of these railway stocks were obtained by Campbell on a contract that he was to retain one half, if he could give them a marketable value, but if he could not do so within a certain time, the transaction was to be void, and he was to retransfer.

Held, inasmuch as Campbell had an interest in these shares, which was not merely that of a trustee only, but was a personal interest and property, though contingent on the result of his service, and inasmuch as the contract remained in full force up to the time of the making of the deed of assignment in insolvency, and after it,—although no profit had at that time been actually made on the stock,—the shares should have been returned as part of Campbell's assets, for the language of the statute is large enough to cover such an interest. It was a valid executory contract, and as such passed on insolvency to the assignee.

It also appeared that among the assets which the plaintiff alleged were wrongfully withheld was a certain sum which Campbell had received, or to which he had a claim, from a certain Railway Company as compensation for services rendered as temporary acting President.

Held, the portion of the allowance payable and allowed for services rendered up to the date of the assignment in insolvency, was an asset which Campbell was bound to account for, although the remainder of the said compensation belonged to the insolvent.

Held, also, on the whole case, it appearing the said assets were wrongfully and fraudulently withheld, there was no reason why the insolvency proceedings should not be re-opened and carried on in order to make a due administration of the property, thus withheld; and the final order was impeachable on the grounds stated in the bill.

Held, further, (PROUDFOOT, J., *dubitante*), that the discharge should not be affected further than was absolutely required, and as the property in question which was not returned by the defendant as part of his estate was never entered on the books of the partnership, or treated as partnership property, but was always considered and treated by Campbell as his own private