

Province of Manitoba.

QUEEN'S BENCH.

Full Court.]

[June 29.

COLQUHOUN v. SEAGRAM.

*Fraudulent preference—Husband and wife—Assignment of debt.*

This was a rehearing of an appeal from a County Court in an issue to try the right to a debt due to the husband of the plaintiff. The decision of TAYLOR, C.J., on the appeal is noted ante vol. 31, p. 494.

The principal point urged upon the rehearing was that the assignment from the husband to the wife was a fraudulent preference. All the judges agreed that the circumstances showed that the debtor was insolvent, and was aware of his insolvency, and that the effect of the assignment was to give the plaintiff a preference over his other creditors, but they were unable to decide whether there was sufficient pressure upon the debtor to bring the case within the authority of *Molsons Bank v. Haller*, 18 S.C.R. 888, and *Stephens v. McArthur*, 19 S.C.R. 446; and as the only evidence on this point was that of the debtor, who said that he had made the assignment at the request of the plaintiff's solicitor, and the County Court Judge had decided the issue in favor of the defendant on another ground (namely, that the husband could not assign the debt to his wife), which the Court held to be untenable.

*Held*, that a new trial should take place to enable the County Court Judge, with or without the assistance of a jury, to determine whether the debtor was actuated solely by a desire to prefer his wife in making the assignment, or whether the request to do so was the moving cause.

Decision of Park, B., in *Van Casteel v. Booker*, 2 Ex. 691, approved.

Per BAIN, J., the evidence showed there was no real pressure actuating the mind of the debtor, and that he had made the assignment solely with the intent to prefer, and the original verdict for defendant should be restored.

*Hough*, Q.C., for plaintiff.

*Crawford*, Q.C., for plaintiff.

Full Court.]

[June 29.

POCKETT v. POOL.

*Malicious prosecution—Assault—Criminal Code, 1892, sec. 53.*

This was an action for malicious prosecution under the following circumstances: The plaintiff and defendant were owners of adjoining parcels of land separated by a road allowance which was not straight, but was such that if straightened the plaintiff would have more land and the defendant less. In January, 1895, a surveyor proceeded to resurvey the original line and straightened it, removing the old mounds, and constructing new ones, but this was not done under the authority of an Order-in-Council as required by the Dominion Lands Act, so that the old boundary remained the legal boundary between the lands of the parties.

In the following April the plaintiff entered upon the land in dispute, and