

assigned that judgment to James D. Smith, the present appellant. There is nothing to shew that any formal notice of the proceedings or of any contest as to his rights was ever served upon Smith, but he appeared in the proceedings by his solicitor on the 6th July, 1900, and consented to an adjournment of them, and upon the hearing of evidence which took place between all the parties and for all the purposes of their contest between themselves on 24th October, 1900. The learned Judge, after hearing the evidence, held that the commencement of the action having been within 60 days after the transfer to the claimant, the proceedings to set aside the assignment must be taken to have then begun, although the claimant was not made a party to them; that in any event there was no evidence that the assignment was the result of pressure; he gave judgment for the primary creditor against the primary debtor for \$200 and costs, and against the garnishees for \$200 and the costs. The claimant applied to him for a new trial, and upon his application being refused, he appealed.

The appeal was heard on the 23rd January, 1902, before FALCONBRIDGE, C.J., and STREET and BRITTON, JJ.

W. H. Blake, for the appellant.

J. M. McEvoy, London, for the primary creditor.

The learned Judge in the Court below has held that, because the garnishee summons was issued against the primary debtor and the garnishee within sixty days of the making of the transfer in question, the transfer must be held to have been attacked within the sixty days, and consequently that its validity cannot be supported by proof of pressure in procuring it.

In this view I am unable to concur. The transfer cannot be taken to have been attacked until proceedings against the transferee for the purpose are begun, and there is not the slightest evidence that the transferee here, J. D. Smith, was in any way notified of the proceedings or made a party to them, until he appeared in them by his solicitors on 9th July, 1900, the transfer in question having been made in the previous December. I am of opinion, therefore, that we must hold that no proceedings to impeach or set aside the transfer were made until after the expiration of the statutory period of sixty days. Then the question arises whether there is evidence of pressure by the claimant sufficient to enable us to hold upon the authorities that the preference obtained by the claimant was not a mere voluntary act, and therefore an unjust preference under the Act. . . .