

British Columbia.

SUPREME COURT.

Hunter, C.J.] DIAMOND GLASS CO. v. OKELL MORRIS CO. [March 28.
Costs—Summons for judgment under Order XIV.—Practice.

Summons for judgment under Order XIV. The right to judgment was not disputed, but it was contended on behalf of defendant that plaintiff was not entitled to any more costs than he could have got by taking judgment in default of defence as the time for filling defence had expired before the summons was issued.

Held, that plaintiff was entitled to the costs of the summons.
W. A. Gilmour, for plaintiff. *A. J. Keppeler*, for defendant.

Manitoba.

KING'S BENCH.

Dubuc, J.] ROBERTS v. HARTLEY. [March 20.
Fraudulent conveyance—Exemptions—Registered judgment—Judgments Act, R.S.M., c. 80, s. 12—Costs.

The plaintiff's claim in this action was to set aside a deed of the land in question from B. F. Hartley to his wife as fraudulent and void under the statute of 13 Elizabeth and R.S.M., c. 7., and for a declaration that his registered judgment against the husband formed a lien and charge upon the land and that the land should be sold to satisfy the judgment. The property was the actual residence and home of the defendants, and was worth only about \$1,200, and they claimed that under section 12 of the Judgments Act, R.S.M., c. 80, it was exempt from the effect of the registered judgment and proceedings taken by the plaintiff. There was no doubt that B. F. Hartley was insolvent when he made the deed and the stated nominal consideration in the deed was only one dollar.

Held, that the debtor had not, by conveying away his property, lost his right to exemption, and following Story's Equity, s. 367, Taylor on Titles, s. 270, and Am. & Eng. Encyc. of Law, vol. 14, p. 255, that a conveyance of property which could not in the debtor's hands be made available for his creditors will not be declared fraudulent and void under the statutes.

Held, also, that, as the deed could not under the circumstances be set aside as fraudulent, and was good as between the parties to it, the plaintiff was not entitled to the declaration of a lien and charge on the land for his judgment, as it was against the husband alone. *Brinstone v. Smith*, 1 M.R. 302, and *Frost v. Drives*, 10 M.R. 319, distinguished. Action dismissed without costs.

Wilson and Davis, for plaintiff. *Haggart, K.C.*, for defendants.