

The affidavit on which the order had been obtained shewed as the grounds of the plaintiff's belief in the fraudulent intent of defendant to delay, defeat or defraud her creditors only, (1) that the defendant had sold her real estate, and that the plaintiff was informed of such sale by a person who was present at the sale, and (2) that the plaintiff had good reason to believe, and verily believed, that defendant was about to assign, transfer and dispose of her personal property, effects and credits, with intent to delay, defeat or defraud her creditors, and that he was so informed by an auctioneer to whom the defendant applied to purchase the said goods and to pay her the proceeds over and above a certain chattel mortgage, and to whom the defendant had stated that it was her intention to leave the Province as soon as the said goods should be disposed of.

*Held*, that these statements in themselves did not shew sufficient grounds from which to infer fraudulent intent on defendant's part.

On the application to set aside the order plaintiff filed a new affidavit setting forth a number of additional facts, which, together with what had been shewn before, would have been sufficient, in the opinion of the judge, to found an order for an attachment, but at the same time disclosing that he held security from defendant for part of his claim, and that defendant, prior to the issue of the attachment, had offered to pay that part of the debt for which the security was held.

*Held*, 1. The new evidence given by plaintiff could not be considered with the view of strengthening his case.

2. Following the practice in motions for injunctions, the non-disclosure by plaintiff of material facts in defendant's favour suppressed or omitted either intentionally or by mistake is good cause for setting aside an order for attachment, even though the plaintiff would have been entitled to the order on a full statement of the facts.

Order setting aside the order for attachment without costs owing to defendant's delay in moving.

Subsequently in Trinity Term the Full Court dismissed with costs an appeal by plaintiff from the above decision.

*Mathers*, for plaintiff. *Bradshaw*, for defendant.

Killam, C.J.]

HUDDERSTONE v. LOVE.

[July 5.]

*Way of necessity — Right of way — Parcel grant of right of way — Easement by prescription.*

The plaintiff's claim was for damages for trespass and an injunction to prevent defendant from exercising an alleged right to cross the plaintiff's land in going from his farm to the travelled road. The two parcels of land were separated by at least half a mile, but evidence was given to show that in the year 1875 the plaintiff's predecessor in title had, as part of an agreement for an exchange of the two parcels with the defendant, promised