

MANITOBA.

COURT OF QUEEN'S BENCH.

TAYLOR, C.J.]

[Aug. 14.

THOMPSON v. DIDION.

Fraudulent judgment—Husband and wife—Loan to husband—Evidence—Burden of proof—Possession by husband of wife's separate estate.

This was a suit in equity to set aside, as fraudulent and void, a judgment recovered by the defendant, Mrs. Didion, against her husband, the other defendant. The plaintiffs were creditors of the husband, and contended that the husband really did not owe his wife the money for which she sued him.

The husband, in giving his creditors statements of his affairs, from time to time, never informed any of them of the alleged indebtedness to his wife. The instruction for the suit of the wife against the husband were given by the husband, and judgment in the suit was signed for want of a plea within nine days after the issue of the writ. The defendants in their answers swore to the existence of the alleged indebtedness of the husband to the wife, and that the money lent to him had been derived by the wife from her father's estate. They also denied the charges of fraud in the bill, and gave particulars of the amounts advanced to the husband. The only evidence in support of the plaintiffs' case was that of two of the creditors to whom the husband had made statements of his affairs, in which he never mentioned any claim of his wife.

One of the witnesses testified as to what took place at an interview with the debtor respecting the wife's suit against him, in which he stated that he had borrowed money from his wife, and that she had sued to secure her claim. Another witness stated that Didion had said that a man had sued him, and that he had got his wife to sue, that he might dictate to his creditors.

Held, that the statements made by the husband were not evidence against his wife, and that there was no evidence to displace the sworn statements of the defendants in their answers.

Held, also, that the defendant, Mrs. Didion, was not bound to give evidence in court in denial of an alleged statement of her husband, proved by one of the witnesses, that her judgment was got for a cloud, although she was present in court. *Barber v. Furlong*, (1891) 3 Ch. 184, distinguished. Such a rule as was applied in that case should not, in any view, be applied in the present case, where the defendant, although sitting in court, did not understand the language spoken by the witnesses, but only French.

While there may be a presumption that the income of a wife's separate property received by the husband is to be regarded in the light of a gift, there is no such presumption where he receives the corpus. See R.S.M., c. 95, s. 5.

The cases of *Scales v. Barber*, 28 Beav. 91; *Carnegie v. Carnegie*, 30 L.T.N.S. 460; *Re Curtis, Hawes v. Curtis*, 52 L.T.N.S. 244; and *Re Blake, Blake v. Bowser*, 60 L.T.N.S. 663, show that the wife can, without any evidence of a