

From Teetzel, J.]

[Nov. 13, 1905.]

CANADA CARRIAGE CO. v. LEA.

Fraudulent conveyance—Action to set aside—Evidence—New trial—Conspiracy—Costs—Parties—Damages.

In an action by creditors to set aside as fraudulent and void a conveyance of land and a bill of sale made by an insolvent debtor to his sister-in-law, there was judgment for the plaintiffs at the trial, but on appeal by the defendants, the Court of Appeal, deeming the evidence unsatisfactory, ordered a new trial, upon payment by the defendant grantee of the costs of the former trial and of the appeal, notwithstanding the danger which attends the opening up of a case after the attention of the parties has been directed to the defects in their proofs. A brother of the debtor was made a defendant, as well as the debtor himself and his grantee, it being alleged by the plaintiffs, who sued on behalf of themselves and all creditors, that all the defendants entered into a conspiracy to defeat and defraud the creditors.

Held, that the plaintiffs could not succeed upon the conspiracy claim, for they could shew no special damage accruing to them, and could not recover damages on behalf of a class. And that claim failing, there was no ground for making the debtor's brother a party, and he could not be ordered to pay costs, but the plaintiffs should pay his costs.

Judgment of TEETZEL, J., reversed.

Shepley, K.C., and *Murdoch*, for defendants M. C. Lea and E. A. Lea. *Hobson*, for A. C. Lea. *Lynch-Staunton*, K.C., and *F. Morrison*, for plaintiffs.

From Anglin, J.]

[Nov. 13, 1905.]

STEPHENS v. TORONTO RAILWAY CO.

Damages—Excessive amount—Suggestive reduction—New trial.

Damages to the amount of \$2,100 were recovered by the plaintiff, suing as the father and administrator of his deceased son, 22 years of age, who was killed through defendants' negligence. The son's occupation was that of a labourer, had driven a delivery waggon, etc., the highest rate of wages received by him being for eleven days' work for a telephone company at \$35 a month. His mother was dead and his father had married again. He lived with a widowed sister, but was on good terms with his father and stepmother, whom he visited once or twice a month, when he would give his father from \$2 to \$4, and on one occasion