

the season of an unprecedented drought) for the purpose of clearing the land and piling up the remnants of fires which he had been burning the previous day, with a view of burning them at a future time; that he directed B. not to set any fires that day because of the danger from the wind, but that notwithstanding this B. did set fires, which extended out of the fallow. The trial judge directed the jury that if they believed that the defendant told B. not to set fire in the fallow and he did it in violation of orders the defendant was not responsible for the consequences.

Held, on appeal from a judgment of the County Court Judge refusing a motion for a new trial, that the trial judge was in error in the direction complained of; that there was evidence that the servant was acting within the scope of his employment and that unless it were found, as a matter of fact, that the servant was not so acting within the scope of his employment which question the direction complained of withdrew from the jury, the prohibition to the servant would not exempt the master from liability. Appeal allowed with costs.

Grocket, for appellant. *Barry*, K.C., for respondent.

En banc.] ROYAL BANK OF CANADA v. HALE. [April 22.]

Postponement of trial—Change of venue.

An application was made to Mr. Justice Landry at the Victoria Circuit in behalf of the defendant to postpone the trial of this cause for want of material and necessary witnesses. The application was granted but upon terms that the venue should be changed from Victoria to Carleton.

Held, on motion to rescind this part of this order that the defendant having shewn an unquestionable right to have the cause postponed in consequence of the absence of witnesses, and it being the first time that an application to postpone had been made, the trial judge was not justified in imposing as an additional term the change of venue.

Carvell, for defendant. *Connell*, K.C., for plaintiff.

Province of Manitoba.

KING'S BENCH.

Perdue, J.] FERGUSON v. BRYANS. [March 28.]

Fraudulent preference—Assignments Act, R.S.M. 1902, c. 8, ss. 40, 48—Action by creditor to set aside preference when no assignment under Act—Amendment of statement of claim after expiration of time limited for suit.

This was an action commenced on the 2nd November to set aside as a fraudulent preference an assignment to defendant dated 5th September by one Cockerill of certain moneys payable under fire insurance policies