

Upon the court day the primary creditors, the primary debtor, and J. appeared before the judge in the Division Court, counsel also appearing for the garnish-ees. Judgment was first given in favour of the primary creditors against the primary debtor in each case, and then the question of the validity of the assignment was entered upon and evidence given upon it, J. producing his books and giving his evidence. Judgment was then given declaring the assignment void as against the primary creditors as a fraud upon them. From the judgment J. gave notice of appeal, which he afterwards abandoned, and in the style of cause he named himself as "claimant."

Upon motion by J. for prohibition,

Held, that he had submitted himself to the jurisdiction of the court, and could not be heard to say that he was there merely as a witness; and that the judge, having all parties before him, was justified under s. 197 of the Division Courts Act, R.S.O., c. 51, in trying their rights without going through the formality of calling them before him.

Held, also, that the Division Court had jurisdiction to try the right of the primary creditors to garnish portions of the \$500 sufficient to satisfy their claims, and under s. 197 to determine whether or not the \$500 was at the time of the attachment the property of the debtor.

E. T. English for W. G. Johnson.

Aylesworth, Q.C., and *W. J. Green* for the primary creditors.

IN RE WILSON v. HUTTON.

Prohibition—Division Court—Judge reserving judgment till a day named—Judgment not given till a later day—R.S.O., c. 51, s. 144—Acquiescence.

Where a judge in an action in a Division Court has pronounced a judgment otherwise than in accordance with the direction of s. 144 of the Division Courts Act, R.S.O., c. 51, such judgment can, upon motion for prohibition, only be sustained upon clear and satisfactory evidence that the party complaining has agreed in advance to the adoption of the course which the judge has actually adopted in delivering his judgment, or that he has subsequently acted in such a manner as to waive his right to complain.

And where at the trial of an action in a Division Court judgment was postponed till a named day, but was not then given, and two subsequent days were successfully named by the judge, but judgment was not actually given till three days later than the latest day named, and upon motion for prohibition it was not shown that the party moving had ever agreed that the judgment might be given without previously naming a day for its delivery, and had not acted so as to waive his right to complain, an order was made prohibiting the enforcement of the judgment.

Aylesworth, Q.C., and *Justin* for the defendant.

T. J. Blain for the plaintiff.