

(2) That the covenant was reasonable, and sufficiently certain to be enforced by the court.

(3) That general loss of custom after the commencement of the new business by the defendants could be shown by the plaintiff as evidence to go to the jury of damages resulting to him from such business.

*Ratcliffe v. Evans*, (1892) 2 Q.B. 524, applied and followed.

(4) That damages were properly assessed up to the date of the judgment.

*Stalker v. Dumwich*, 15 O.R. 342, followed.

(5) It is no ground for a new trial that the judge refused to submit any particular question to the jury; but if the judge refuses to charge the jury in respect of the subject-matter of any question which counsel desire to have submitted, it may be made the subject of a motion for a new trial for non-direction.

*Osler*, Q.C., and *Dowdall* for the plaintiff.

*Moss*, Q.C., and *D. B. MacTavish*, Q.C., for the defendants.

Div'l Court.]

[June 26.

OLIVER v. McLAUGHLIN.

*Fraudulent conveyance—Action to set aside—Plaintiff not an execution creditor—Qui tam action—Appropriate relief—Demurrer to relief prayed—Rule 384—13 Eliz., c. 5—Status of plaintiff—Claim upon implied contract to pay mortgage—Proof of contract—Voluntary conveyance—Fraudulent intent.*

(1) Where a creditor brings his action to set aside as fraudulent a conveyance made by his debtor of his property, without first obtaining judgment and execution, he must sue on behalf of all the creditors of the debtor, and in such action his relief will be confined to setting aside the conveyance, leaving him to resort to some independent proceeding to obtain execution against the property comprised in such conveyance.

(2) A demurrer to the relief prayed in respect of the cause of action, and not to the cause of action itself, will not now be allowed. Rule 384 referred to.

(3) The protection of 13 Eliz., c. 5, is not confined to creditors only, but extends to creditors and others who have lawful actions; and in this case, where, before the impeached conveyance was made, all the moneys secured by a mortgage, subject to which the plaintiff had conveyed the mortgaged lands to the fraudulent grantor, had fallen due, the plaintiff had at the time of the making of the conveyance a lawful action upon the implied contract of his vendee to pay the moneys secured by the mortgage, and this implied contract was sufficiently proved against the fraudulent grantee by proof of the mortgage and of the conveyance by the plaintiff to the fraudulent grantor subject to the mortgage.

(4) Where a conveyance is voluntary, it is not necessary to show the fraudulent intent of both parties to it, but only of the maker.

*W. H. Blake* for the plaintiff.

*Aylesworth*, Q.C., for the defendants.