

Province of Manitoba.

QUEEN'S BENCH.

FULL COURT.]

[May 4.

BERTRAND v. HEAMAN.

Evidence—Garnishment—Assignment for creditors.

In this case the Full Court on appeal from Mr. Justice Bain, whose decision is noted, 30 C L.J. 278,

Held (DUBUC, J., dissenting), that the evidence of the admissions of the judgment debtor was not admissible as against the garnishing creditor, either on account of any privity between them or as evidence of declarations made by a party against his own interest (there being no proof of his death); and as there was no other evidence to show that the money in question was part of the estate of the insolvent, the verdict should be entered for the claimant with costs.

Prosser v. Gwillim, 1 C. & K. 95; *Richards v. Johnston*, 4 H. & N. 660; and *Richards v. Jenkins*, 18 Q.B.D. 451, followed.

Machray, for plaintiff.

Bradshaw, for defendant.

DUBUC, J.]

[April 13.

MALCOLM v. BROWN.

Nuisance—Action for damages.

This was a case tried at the last assizes at Portage la Prairie. The plaintiff kept a dry goods store on the ground floor of a building there, and had her dwelling apartments and millinery work rooms on the second floor. The defendants in September last rented the cellar under the plaintiff's store, and put in a large quantity of vegetables of different kinds. The plaintiff proved to the satisfaction of the judge that in December and January following a strong and offensive odor came from the vegetables in the cellar and pervaded the store and work room of the plaintiff, and caused illness to her and some of her employees, and damaged her business, because customers would not come to the plaintiff's store on account of the noxious odors.

Held, that the defendant was liable for the damages suffered by the plaintiff.

The exercise of a person's particular right is limited by the general right of the public, and he cannot in the use of it infringe upon, or interfere with, the legitimate right of his neighbor. The maxim: "*Sic utere tuo ut alienum non laedas*" has its full application in matters of this kind.

Robinson v. Kilvert, 41 Ch. D. 88; and *Reinhardt v. Montastri*, 42 Ch. D. 685, quoted with approval.

Verdict entered for plaintiff for \$336.

Anderson, for plaintiff.

Cooper, Q.C., for defendant.