tory the Court would not interfere with the decision of the judge who tried the case:

Held, also that in an action of that nature the questions must be tried by the judge; and the plaintiff is not entitled to give *prima facie* evidence of the breach of contract and ask for a reference as to damages.

Bethune, Q.C., and *D. Smart*, for the appellant.

Hector Cameron, Q.C., and *H. J. Scott*, Q.C., for the respondents.

ALEXANDER v. WANELL.

Trust deed—Fraudulent contrivance.

Held (reversing the judgment of the County Court), that an insolvent debtor on executing an assignment of his effects, where done *bona fide*, may empower the assignee to sell the business as a going concern, or to carry on the same until the assignee shall deem it advisable to distribute the estate—and, in thus carrying on the business to expend moneys of the estate in purchasing new goods and employing assistants in carrying out the trusts of the deed.

HAGARTY, C.J.O., dissenting, who thought that the mere fact of such stipulations being inserted in the instrument, no matter with what *bona fides* the same may have been done, renders it liable to be impeached as a fraudulent contrivance to hinder and delay creditors.

Osler, Q.C., and *Teetzel*, for the appellant.

W. F. Walker, for the respondent.

BURNS v. YOUNG.

Half-breed rights—Transfer of scrip.

The plaintiff had agreed with the defendant to purchase the claim to land scrip, in Manitoba, of a half-breed, and defendant did assign to plaintiff the claim of one alleged to be a child of a half-breed. This turned out to be incorrect and the scrip which had been issued to him was worthless.

Held (reversing the judgment of the County Court), that the plaintiff was entitled to recover from the defendant the amount paid by the plaintiff on the assignment of the so-called right; the plaintiff to assign to the defendant, *quantum valeat*, the land scrip he had received.

A. Hoskin, Q.C., for appellant.

J. Roaf, for respondent.

PEART v. GRAND TRUNK RAILWAY.

Liability of railways—Neglect to sound whistle or bell.

A locomotive of the defendants ran over and killed one P. In an action brought against the company by his representatives, it was sworn by several witnesses, who were near by at the time of the accident, that no bell was rung or whistle sounded. The jury found in favour of the plaintiffs, notwithstanding that the driver and other officers on the train swore that the bell was rung and the whistle sounded on approaching the crossing, when P. was killed, which the Divisional Court refused to set aside. On appeal to this Court the judgment of the Divisional Court was affirmed; CAMERON, C.J., dissenting.

Bethune, Q.C., for the appellants.

Van Norman, Q.C., for the respondents.

[October 20.

BELL v. RIDDELL.

Promissory note—Illegal consideration—Compounding felony.

The judgment reported 2 O. R. 25, affirmed by this Court.

Osler, Q.C., and *Plumb*, for appellent.

Falconbridge, for respondent.

GARRETT v. ROBERTS.

Action by a common informer—Infant.

An infant cannot maintain an action for a penalty as a common informer.

The defendant was one of the deputy returning officers in the Lennox election. And on an alleged voter requesting a ballot claiming a right to vote as a tenant, it was alleged the voter had removed from the division where he claimed to vote. The returning officer insisted that the voter should take the oath stating that he was still resident within such division, the fact being that the voter had property there though resident outside which oath the voter refused to take; and the plaintiff, an infant under twenty-one years, instituted proceedings for the penalty of $200, for which he recovered judgment in the County Court.

Held, on appeal to this Court, reversing the County Court, that the Statute 18 Eliz. ch., was in force in this Province and being so the