

the jury, all of which were answered in plaintiff's favour, with the exception of the 8th, which was as follows: "Whether there was any understanding between the defendant company or its directors and A. R. F., either express or implied, to abandon the criminal prosecution if the assignment and warrant to confess judgment were executed," to which the jury answered "No."

Held, that in the absence of such understanding or agreement the mere fact that threats of a criminal prosecution were employed to induce A. R. F. to give security for a debt admittedly due, and compliance on his part in fear of arrest for the alleged offence, were not enough to invalidate the security given under such circumstances.

Semble, that the case where the debtor or delinquent is himself seeking to avoid his contract is distinguishable from the case where the security is given by a third party in fear of or to save from criminal prosecution a near relative.

Semble, that where the threat is only to do that which may lawfully be done, as a threat of a lawful imprisonment, there is no duress.

H. A. Lovett, for appellants. *R. L. Borden*, Q.C., and *H. McKensie*, for respondents.

Townshend, J.]

PITFIELD v. GUEST.

[March 11.

Fraudulent assignment—Particulars of fraud.

This was an action of replevin against the Sheriff of Yarmouth. The defendant pleaded, *inter alia*, that the deed of assignment under which the plaintiff claimed (a) was made "for the purpose and with the intent to defraud, hinder and delay the creditors of the grantor, etc." and (b) that the deed "is void under 13 Eliz. c. 5, as hindering and delaying creditors." The plaintiff moved under Order 19, Rule 7, for further and better particulars of the fraud pleaded as aforesaid, citing *The Rory*, 7 P.D. 121, and *Wallingford v. Mutual Society*, 5 App. Cas. 701.

Held, that the particulars sought must be refused with costs. The plea of purpose and intent has a well settled meaning and indicates all that can reasonably be asked. It is not such a general allegation of fraud as is mentioned in the cases cited by the applicant. It is as definite as is necessary. The defence of the statute 13 Eliz. is specifically set up, and what that defence means and the evidence required under it are too well known to take anyone by surprise.

J. A. Chisholm, for the motion. *Ernest Gregory*, contra.

Province of Manitoba.

QUEEN'S BENCH.

Full Court.]

CARRUTHERS v. HAMILTON PROVIDENT.

[March 5.

Mortgagor and mortgagee—Negligence in exercising power of sale.

Appeal from decision of Bain, J., noted ante p. 51, dismissed with costs, but verdict reduced by \$200.

C. H. Campbell, Q.C., for plaintiff. *J. S. Ewart*, Q.C., and *A. D. Cameron* for defendant.