

*Held*, further, that the defendant could not be deprived of his right to a jury where the cause "was not exclusively one of an equitable nature, but embraced both common law rights and claims to equitable relief, but the judge at the trial could submit the equitable issues to the jury, or reserve them for future consideration.

*Held*, further, that the amendment made by Acts of 1889, c. 6, allowing the jury notice to be given "at least twenty days before the first day of the term or sittings of the said Court, at which said issue is to be tried, etc., was meant to enlarge the right, and not to restrict it to the first sittings of the Court, at which it could be tried.

*Held*, further, that as the question was raised for the first time, and as plaintiff had reasonable ground for insisting upon going to trial before a judge, there should be no costs.

*R. E. Harris, Q.C.*, for plaintiff.

*Drysdale, Q.C.*, and *McInnes*, for defendants.

Full Court.]

[May 8.]

MULCAHY v. ARCHIBALD.

*Fraudulent scheme to defeat and delay creditors will be set aside, where intent is established, notwithstanding existence of consideration—Replevin against sheriff for goods taken under execution.*

W., while on a trading voyage, purchased a quantity of fish from B., and gave him in payment a draft on B. & Co., of Halifax. W., on his arrival at Halifax, neglected to pay the draft, and made use of the proceeds of the sale of the fish for other purposes, B. brought an action, and W., being threatened with execution, made a verbal arrangement with plaintiff, to whom he was indebted, to take over his stock of goods and business, and the vessels in which the business was carried on, which were already in plaintiff's name, and to employ W. to carry on the business as her agent, paying him wages therefor. With the goods so transferred to plaintiff, W. proceeded upon another voyage, and acquired other fish, which were taken by the defendant sheriff under execution at the suit of B. Plaintiff brought replevin.

*Held*, reversing with costs the judgment of the trial judge in plaintiff's favor, that the evidence showing a fraudulent purpose on the part of the plaintiff and W. to defeat and delay creditors, the transaction was bad and could not stand, notwithstanding the existence of an indebtedness from W. to plaintiff.

Per TOWNSEND, J. (obiter) that replevin will lie against a sheriff for goods taken under execution.

*Drysdale, Q.C.*, for appellant.

*R. E. Harris, Q.C.*, for respondent.