delay, or prejudice his creditors, or to give to any one or more of them a preference, or (2) it must have that effect.

In an action by the plaintiff, a creditor, to set aside a mortgage made by the debtor to the defendant,

Held, on the evidence set out in this case, that the debtor was insolvent when he made the mortgage, and that the defendant obtained a preference thereby over the other creditors, and must be set aside.

Per ROSE, J.: The value of dower is properly admissible in determining the value of the debtor's liabilities.

The learned judge charged the jury that there was a difference between the debtor, who was a farmer, and a trader on whom calls for payment may be made day by day; that a trader was not expected to meet demands exactly in that way. The principal question was whether he owned property at that time, which with reasonable management, with proper care, and with reasonable time, would enable him if he was pressed, to pay his debts in full or not.

Per ROSE, J.: That there was misdirection in that he did not guard his direction by stating that there was no difference in principle, where the question to be determined was whether there were assets out of which the liabilities could be collected, if necessary, by levy and execution.

Two of the debts owing were to relatives, being for $1,840 and $800, secured by mortgage and promissory notes. The learned judge charged the jury that because the debts were under the control of the debtor they must not be included in estimating the liabilities.

Per ROSE, J.: This was misdirection also.

Held, following *Macdonald* v. *McCall*, that a creditor, to maintain an action of this kind, need not be a judgment creditor.

Held, also, that there is nothing to prevent a judge at the trial directing equitable issues being tried by a jury.

Per CAMERON, C.J.: In determining whether a debtor is insolvent, etc., his assets or effects are not to be estimated at what they might bring at a forced sale under execution; but at the fair value in cash on the market at any ordinary sale.

Shepley, for the plaintiff.

Woods, Q.C., for the defendant.

STEVENSON V. TRAYNOR.

Assessment and taxes—Onus of proof—Arrears of taxes.

In ejectment the plaintiff claimed under a patent from the Crown, dated 15th June, 1878. The defendant claimed under a tax deed dated 10th November, 1881, made under a sale for taxes on 21st October, 1880. The taxes for which the land was sold were $1.13 for school rate in 1877, and $1 for 1878. There was no evidence as to the rights of the plaintiff prior to the issuing of the patent, nor was it shown that the Commissioner of Crown Lands had made any return to the treasurer of the land having been located as a free grant, "sold or agreed to be sold" under R. S. O. ch. 108, sec. 106.

Held, that the production by defendant of the tax deed did not cast the onus on the plaintiff, the patentee, of proving that no taxes were in arrear; but that the plaintiff by the production of his patent made out a *prima facie* case, and the defendant, relying on his tax deed, was bound to prove the tax sale and that some portion of the taxes were in arrears for three years, which the evidence failed to show.

Laidlaw, Q.C., for the plaintiff.

J. B. Clarke, for the defendant.

COCKBURN V. MUSKOKA LUMBER COMPANY.

Free grant lands—Locatee cutting timber for clearing—Timber licensee—Damages—Loss of profits.

Under sec. 10 of R. S. O. cb. 24, as amended by sec. 2 of 43 Vict. ch. 4 (O.), the locatee may cut and use such pine trees as may be necessary for the purpose of building and fencing on the land so located, and may also cut and dispose of all trees, including pine trees, required to be removed in the actual clearing of the land for cultivation, but no pine trees (except for the necessary building and fencing as aforesaid) shall be cut beyond the limit of said clearing.

Held, that there was nothing to prevent the cutting, clearing and cultivating the land in several parcels in various shapes and forms, it not being necessary that the clearings should