

after such withdrawal, of making away with the amount to the detriment of his creditors in general and the plaintiff in particular, I think the *capias* might have been maintained; for this would not be a case of so-called constructive secretion which it is not clear the law recognises, but a case of actual secretion; the altering of the heading of the account being the first step in the process." But afterwards, and in some degree because this alteration of the account was not immediately before the insolvency of the Bank, but a month or two earlier, the learned Judge comes to the conclusion at which he ultimately arrived in favor of the defendant. It appears, however, to their Lordships that there was abundant evidence from which Mr. Justice Papineau, sitting in the Superior Court, and the majority of the Judges of the Appellate Court, might come to the conclusion that the transaction was really one of the nature described by Mr. Justice Monk, and that it was a case of actual secretion or making away of property of the debtor within the meaning of the Code of Procedure. It is not necessary for them, they think, to go further and to express a fuller opinion of their own on the facts of the case which they have not heard fully, and, of course, having had no opportunity, of going into detail through the evidence in the case. Their Lordships, however, think that the Judges had before them ample evidence of the fraudulent intent which was imputed to the petitioner.

The case was put finally by Mr. Digby in this way:—That the money was either the money of the wife or that it was not; that if it was her money, it was right to give it to her; that if it was not her money, then that it could be shown to be properly applied. But their Lordships think there is no pretence whatever on the facts for saying that this money was the money of the wife. It was set up, after the transaction of borrowing took place, that the property pledged was property which the defendant had no right to pledge, but that it was property which his wife and children, under his father's will, had by some substitution of interest which prevented his disposing of it. The money was borrowed by him on his own credit. The only inference to be drawn from the title of the wife, supposing it to be a good title, would be that it was a fraudulent transac-

tion, in so far as it purported to pledge property that was not his. She could not have both the property and the money, and it is quite clear from some of the evidence which has been brought before their Lordships that the petitioner has been treating the property as hers; that a lease has been granted of it, and he himself admits he is receiving rent payable by the lessee as *aliment* for his wife and children. Then, if it were not her money, the fraudulent act, if it were fraudulent, was complete when it was transferred into her name and afterwards withdrawn in her name, and withdrawn too, as he then avowed, in order that he should not himself come upon the street, a statement which could only mean that he either wished to make a provision for his wife to keep him off the street, or that he had withdrawn it for his own purposes. The subsequent application of it to other creditors would not, if established, have been material, and that therefore is an answer to the argument that the case should be sent for a new trial or otherwise put into a way for further investigation, in order that Mr. Barnard, the petitioner's solicitor, should be examined.

On the whole, their Lordships think that they cannot advise Her Majesty to grant special leave to appeal, and that this petition must be dismissed with costs.

GENERAL NOTES.

An English notice of the late Lord Justice Thesiger says that "he had the invaluable aid to an advocate with his fellows of being known never to take an advantage not permitted by the rules of the game."

LEGAL CHRISTMAS BOXES.—In the report of the Commissioners for enquiring into the duties salaries, and emoluments of the judges, &c., of the courts of justice in England, it appears that the Lord Chief Justice of the Court of King's Bench, "according to ancient usage," receives annually at Christmas four yards of broadcloth from Blackwell Hall, and thirty-six loaves of sugar presented to him by particular officers on the plea side of the Court; and that each *Puisne* judge receives annually from the same officers a small silver plate and eighteen loaves of sugar.—*Literary Panorama*, Dec., 1818.