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GARDNER
v.
KLEPFER.
Taschereau
J.

reasons given by Strong J. in favor of sustaining the judgment of the Court of Appeal.

Appeal dismissed with costs

Solicitors for appellant: *Wilson & Evans.*

Solicitors for respondents: *Coffee, Field & Wissler.*

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Nov. 23.

SAMUEL SHOREY AND OTHERS }
(DEFENDANTS)..... }

APPELLANTS ;

AND

THOMAS R. JONES AND OTHERS }
(PLAINTIFFS)..... }

RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Assignment—For benefit of creditors—Obtained by Duress—Improper use of criminal process—Stifling criminal charge.

S., a trader in Yarmouth, N. S., had a number of creditors in Montreal. J., one of such creditors, preferred a criminal charge against S., sent a detective to Yarmouth with a warrant, caused such warrant to be indorsed by a local magistrate and had S. brought to Montreal, when the other creditors there issued writs of *capias* for their respective claims. The father of S. came to Montreal and in consideration of the release of S. on both the civil and criminal charges transferred all his property for the benefit of the Montreal creditors, and S. was released from gaol having giving his own recognizance to appear on the criminal charge. In the settlement to the claims of the creditors was added the costs of both the civil and criminal suits. In a suit to set aside the transfer as being obtained by duress and to stifle the criminal prosecution, the evidence showed that the creditors, in taking the proceedings they did, expected to obtain the security of the friends of S.

Held, affirming the judgment of the court below, that the nature of the proceedings and the evidence clearly showed that the criminal process was only used for the purpose of getting S. to Montreal to enable the creditors to put pressure on him, in order to get their claims paid or secured, and the transfer made by the father under such circumstances was void.

APPEAL from a decision of the Supreme Court of Nova Scotia (1) affirming the judgment at the hearing in

* PRESENT: Sir W. J. Ritchie C.J., and Strong, Taschereau, Gwynne and Patterson JJ.

favor of the plaintiffs.

One Melbourne J. Sheehan, a trader doing business in Yarmouth, N. S., became insolvent and made an assignment to the defendant Thomas W. Johns in trust for the benefit of his creditors. Sheehan had a number of creditors in Montreal, one of whom caused a criminal charge to be preferred against him and sent a detective to Yarmouth with a warrant for his arrest on such charge. The warrant having been indorsed by a magistrate in Yarmouth, Sheehan was arrested and conveyed to Montreal where he was kept in gaol for several weeks. While there several of the other creditors issued writs of *capias* against him.

The plaintiff Sheehan, father of the said Melbourne J. Sheehan, went to Montreal in obedience to a subpoena issued by the prosecutor on the criminal charge, and after a consultation with his son he had an interview with the creditors who agreed to release the son on the civil suits, and use their influence to procure his release on the criminal charge, on condition of a release in favor of the creditors of the father's preferred claim in the assignment by the son to Johns and the payment by the father of the costs, both in the civil and criminal suits, the latter to be secured by the assignment of a mortgage held by the father. This was assented to and the necessary deeds were executed by the father and the son was released from gaol, the criminal matter being satisfied by his own recognizance.

The plaintiff Sheehan subsequently transferred his said preferential claim and mortgage to the plaintiff, Thomas R. Jones, as security for a debt of his son, and an action was brought by Jones and Sheehan to have the transfers in favor of the Montreal creditors set aside as having been obtained by duress, and in pursuance of an agreement to stifle the said criminal charge. At the hearing one of the creditors in giving evidence

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said that in taking proceedings against the son it was expected that his friends would come to his aid, that it was understood he had a father who was worth money.

At the trial all the issues were found in favor of the plaintiffs and such findings were confirmed by the full court. The defendants then appealed to the Supreme Court of Canada.

Greenshields for the appellants contended that the evidence showed no dealings by the Montreal creditors with the criminal charge. They only undertook to release their own claims against the son. They were entirely within their right in issuing the writs of *capias*. C. C. P. art. 798.

It cannot be said that there was any stifling of the criminal charge for the charge is still pending, the prisoner being on bail.

Harrington Q.C. for the respondents was stopped as the court was unanimous that the appeal should be dismissed with costs.

Sir W. J. RITCHIE C. J.—I think it very clear that the defendants used the criminal process for the purpose of extorting from this old man the transfer of his property, and I think that no court having proper respect for itself would sanction such a proceeding.

STRONG, TASCHEREAU and PATTERSON JJ. concurred.

GWYNNE J.—The whole proceedings of the appellants by which they obtained the assignment which the court in Nova Scotia has avoided were, in my judgment, a monstrous outrage upon justice and the appeal, therefore, should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for appellants: *S. H. Pelton.*

Solicitors for respondents: *Harrington & Chisholm.*