

Full Court.]

WEATHERBE v. WHITNEY.

[Jan. 22.

*Contract for sale of coal mining areas—Plaintiff not entitled to recover alleged price but only damages occasioned by breach—Arrest of defendant—Order for set aside—Claim that equitable title passed—Affidavit held insufficient in support—Where perfected and completed sale is alleged it need not be alleged further that title passed.*

Plaintiff brought an action against defendant for the breach of a contract for the sale of a certain coal mining property, claiming among other things the specific performance of the alleged agreement, or, in the alternative, damages for the non-performance thereof. Subsequently to the bringing of the action plaintiff procured an order for the defendant's arrest on the ground that he was about to leave the Province, and that unless he was forthwith arrested the debt would be lost.

*Held*, (affirming on this point the judgment of Ritchie, J., setting aside the order) that the breach of an agreement for the sale of a mining right does not entitle the vendor to recover the purchase money, but only to damages occasioned by the breach.

It was contended on the part of plaintiff that the equitable title to the areas passed by the agreement, and that this was sufficient to entitle plaintiff to sue for the price of the areas.

*Held*, that even if this were true, as the only allegation in plaintiff's affidavit was that defendant signed by his agent, and not that he himself signed a note or memorandum of the agreement, this not being an equitable action for specific performance but a common law action to recover a certain sum of money, the alleged price of the areas, that plaintiff could not succeed on that ground in upholding his proceedings.

*Held*, further, on the authority of *Hargreaves v. Hayes*, 5 E. & B. 272, (reversing on this point the decision appealed from) that it was not necessary for plaintiff, in his affidavit, in addition to alleging a perfected and completed sale of the coal mining areas to defendant, to allege that the title passed.

*W. B. A. Ritchie*, Q.C., for appellant. *W. B. Ross*, Q.C., for respondent.

Full Court.]

FULTON v. THE KINGSTON VEHICLE CO.

[Jan. 22.

*Assignment and confession of judgment—Induced by threat of criminal prosecution—Held not ground for setting aside in absence of agreement express or implied to abandon proceedings—Where debtor or delinquent is himself seeking to avoid contract—Held distinguishable—Threat to do that which may lawfully be done—Held not to be duress.*

Plaintiffs sought to set aside a deed of assignment made by A. R. F. to the defendant F. in which the defendant company were preferred creditors, and also a judgment confessed to the defendant company at the same time, on the grounds that A. R. F. was induced to make the assignment and confess the judgment, (1.) under threat of criminal prosecution; (2.) by an agreement on the part of defendants to stifle such criminal prosecution if their demand was complied with. A large number of questions were submitted to