

granted the injunction, as the order was in a large measure one of discretion with which an Appellate Court would not lightly interfere, especially as the order appealed from enjoined upon the contractor nothing but what was his duty without an injunction.

4. Notwithstanding the case of *Wood v. Sutcliffe*, 2 Sim., N.S. 168, an offer or suggestion on the part of the plaintiffs, before commencing the action, to accept a bond to secure them against damages, even if distinctly proved, would not necessarily preclude them from claiming an injunction afterwards, though it would be a fact to be taken into consideration in determining whether a remedy by action for damages would not be adequate.

Appeal dismissed with costs to be paid by defendant Alsip upon the final disposition of the action in any event of the action.

*Aikins*, K.C., and *Pitblado*, for plaintiff. *Tupper*, K.C., and *Minty*, for defendant.

Full Court]

CAMPBELL v. MCKINNON.

[May 23.

*Landlord and tenant—Execution creditor—Grain grown on farm leased to execution debtor—R.S.M. 1902, c. 11, s. 39.*

Appeal from a judgment of a County Court in favour of an execution creditor as against the claimant of a quantity of grain seized in stack unthreshed. The claimant let the execution debtor the farm on which the grain had been grown by an indenture reserving as rent "the—share or portion of the whole crop which shall be grown upon the demised premises as hereinafter set forth." The lease also provided that the lessor might retain from the share of the crop that was to be delivered to the lessee a sufficient amount to cover taxes, and to repay advances and other indebtedness; that the lessee, immediately after threshing, should deliver the whole crop, excepting hay, in the name of the lessor at an elevator to be named by the lessor; that all crops of grain grown upon the said premises should be and remain the absolute property of the lessor until all covenants, conditions, provisos and agreements therein contained should have been fully kept, performed and satisfied; and that the lessor should deliver to the lessee two-thirds of the proceeds of the crop to be stored in the elevator, less any sum retained for taxes, advances, etc. The grain in question had, until its seizure under the plaintiff's execution, remained on the farm in the possession of the lessee. The claimant claimed it as owner under the terms of the lease and not for rent.

*Held*, 1. The lease did not operate to prevent the lessee from ever having any property in the grain to be grown. Prima facie the legal ownership of it would be in the lessee until delivery at the elevator for the lessor, as there was nothing to indicate that the lessee was to cultivate the farm as the servant, agent, bailee or other instrument of the lessor.