proceeded to harrow and sow a crop upon it, when the defendant appeared upon the scene, and ordered him to leave, which he refused to do, but went on to complete the sowing. The defendant then laid an information before a magistrate charging the plaintiff with assault, when the plaintiff was arrested, taken before a magistrate and committed for trial. On being discharged he brought this action. At the trial, the jury found that the defendant was not justified in thinking, from the actions and conduct of the plaintiff when ordered off the land, that he would resist by force a forcible attempt on the part of the defendant to remove him, and that the conduct of the defendant in entering proceedings against the plaintiff was malicious. The defendant's contention was that the plaintiff should be held to have committed an assault within the meaning of section 53 of the Criminal Code, 1892, and that the defendant was therefore justified in taking the proceedings complained of.

Held, however, that there can be no assault under section 53, unless force is used to repel force, and as defendant had used no force to eject the plaintiff, and plaintiff had merely refused to leave, there was no ground for charging an assault, and that the verdict in the plaintiff's favor at the trial must stand.

Howell, Q.C., for plaintiff.

Wilson, for defendant.

Full Court.] [June 29.

MILLER *v.* IMPERIAL LOAN CO.

Distress for rent—Distress for interest—Mortgage—Attornment — Evidence.

One Robertson had given a mortgage to defendants upon certain land, and then leased the property to one Reid, who made a sub-lease to the plaintiff for nine months. The plaintiff then raised a crop of wheat, barley and oats upon the land, when it was seized by defendants' bailiff under a warrant to collect the alleged arrears of interest on Robertson's mortgage. The mortgage contained the usual provision that the defendants might distrain for arrears of interest. It also contained an attornment clause, by which the mortgagor became a tenant to the defendants of the land at a yearly rental equal to the amount of the interest payable under the mortgage.

The warrant under which the bailiff acted was not produced at the trial, and was said to have been lost; but the Court inferred from the evidence that it directed the bailiff to distrain for arrears of interest, and not for rent due.

The plaintiff then sued in trespass and trover.

Held, that under R. S. M., ch. 46, sec. 2, the distress was wholly illegal, as defendants could only take the goods of the mortgagor for arrears of interest due by him.

It appeared that after the seizure and sale of the crops the plaintiff's husband agreed with the defendants' manager to pay the defendants $200 if they would abandon their claim to the crop, and procure a release from the person who had bought it at the sale. This money was afterwards paid, and accepted by the defendants, and they contended that the agreement was an admission of rent being due, and that the statute 11 Geo. II., ch. 19, sec 19, applied so as to prevent the plaintiff from bringing an action such as the present, and that she