

Meredith, C. J., Rose, J.] GALLAGHER v. GALLAGHER.

[Oct. 9.]

Appeal—County Court—Interlocutory order—Order discharging defendant from custody under a ca. sa.

An appeal by the plaintiff from the order of the Judge of the County Court of Frontenac discharging the defendant from arrest under a *ca. sa.* in an action in the County Court. When the appeal came on for hearing on the 6th of September, 1899, *C. J. McCabe*, for the defendant, asked to have the hearing adjourned.

THE COURT raised the point that the order appealed against was not in its nature final, but merely interlocutory, and therefore no appeal lay.

Kilmer, for the plaintiff, contended that the Judge had no power to make an order discharging the defendant except under the Indigent Debtors' Act; *Gossling v. McBride*, 17 P.R. 585. The order must, therefore, be taken to have been under that Act, and if so, it was an order in its nature final. Cur. ad. vult.

THE COURT felt bound by *McPherson v. Wilson*, 13 P.R. 339, and *Baby v. Ross*, 14 P.R. 440, to hold that the order appealed against was not in its nature final; and quashed the appeal with costs as of a motion to quash.

Province of Nova Scotia.

SUPREME COURT.

Full Court.]

WILKIE v. RICHARDS.

[May 15.]

Trespass to land—Justification under tenant in dower—Wood cut for firewood and fencing—R.S. (5th series), c. 94, s. 66—Injury to inheritance—Plaintiff out of possession.

In an action brought by plaintiff as owner in fee in possession of a certain tract of land against defendant for breaking and entering and cutting wood, etc., defendant justified under C.R. the tenant in dower to whom the land where the cutting took place had been assigned.

The learned trial judge having found in defendant's favour as to the boundaries of the land assigned,

Held, that his finding on this point should not be disturbed.

Held, also, that under the provisions of R.S. (5th series), c. 94, s. 66, where there is in the same parcel both cultivated land and woodland assigned, the timber cut for fencing must be confined in the use thereof to the same parcel of land, but firewood may be taken for the widow's use, even though she may not reside on the identical parcel or tract from which it is taken.

Held, also, that plaintiff could not recover on a claim for carrying a