

Boyd, C., Meredith, J., Magee, J.]

[Dec. 30, 1904.]

BEEMER v. BEEMER.*Malicious prosecution—Proof of favourable termination of prosecution—Informal abandonment—Findings of jury.*

This was an action for malicious prosecution upon an information before the Police Magistrate by the defendant charging the plaintiff with setting fire to the house of the defendants's mother. Warrants were issued, the plaintiff was arrested and put under bail to appear on a particular day for preliminary hearing, and eleven witnesses for the prosecution were summoned for the same day. Before that day the prosecutrix obtained information leading her to believe that the plaintiff could not have caused the fire in question. Whether anything, or what, passed between her and the magistrate in consequence was not shewn, but the magistrate gave some instructions to the chief constable, and in the result no witnesses appeared, the proceedings were in some way stopped, and the prosecutrix or her mother paid the fees and nothing more was heard of the case. Three months afterwards this action was commenced.

Held, MEREDITH, J., dissenting, that enough had been shewn to justify the jury and the court in assuming that the prosecution had terminated favourably to the accused before the action was brought.

Holman, K.C., for defendants. *Heyd*, K.C., for plaintiff.

Falconbridge, C.J.K.B., Street, J., Britton, J.]

[Jan. 4.]

NELSON v. LENZ.*Division Courts—Attachment of debts—Jurisdiction—Garnishee out of Province—"Carrying on business"—Assignee of fund attached—"Intervener."*

A person living in the United States entered into a contract in Ontario for the building of a house upon land owned by his wife. It was shewn also that he acted as his wife's agent in affairs relating to this property and other property in Ontario, all situate within the territory of a certain Division Court, process from which was issued against him as garnishee.

Held, that the evidence did not shew that he was carrying on business in the division within the meaning of s. 190 of the Division Courts Act, R.S.O. 1897, c. 60.

Held, however, STREET, J., dissenting, that, as the garnishee had submitted to the jurisdiction of the Division Court, a person holding an equitable assignment from the primary debtor of a part of the fund sought to be garnished, could not effectively