

breach of a covenant therefor contained in the lease, the lessor was held entitled to recover as damages the rent so payable in advance, without any deduction for rents realized during the said quarter under new leases created by the lessor, who, finding the property vacant, had taken possession.

W. M. Douglas, for the plaintiff.

Talbot Macbeth, for the defendant.

Divisional Court.]

[Dec. 12, 1896.]

REGINA EX REL. BROWN v. SIMPSON.

Incorporated company—Carrying on business as chemists—Pharmacy Act, R.S.O. c. 151—Special case under s. 900 of Criminal Code—Right of police magistrate to state—Procedure under R.S.O. c. 74.

An incorporated company, carrying on business as a departmental store, and having a drug department under the management of a duly qualified and registered pharmaceutical chemist, who had obtained his certificate under the Pharmacy Act, R.S.O. c. 151, were charged with a breach of s. 24 of the Pharmacy Act, in unlawfully keeping open shop for retailing, dispensing and compounding poisons, etc., before a police magistrate, who dismissed the charge, but at the request of the prosecutor he stated a special case for the opinion of a division of the High Court.

Held, that there was no power to state a case, for the alleged offence being for the breach of an Ontario statute, the procedure provided for by the Ontario legislation applied, which was by way of appeal to the sessions, and not the stating of a case under s. 900 of the Criminal Code.

Oster, Q.C., and *Malone* for the private prosecutors.

Ritchie, Q.C., *Shepley*, Q.C., and *Ludwig*, for the defendants.

BOYD, C., FERGUSON, J. }
MEREDITH, J. }

[Dec. 17, 1896.]

MCGILLIVRAY v. MIMICO REAL ESTATE SECURITY CO.

Covenant against incumbrances—Sale of land—Breach—Measure of damages.

Action for damages for breach of covenant against incumbrances. The mortgage wherein consisted the breach was on the lands in question and other lands, and was for an amount much greater than the present value of the land. It was impossible to apportion it so as to ascertain the incidence of the burden on the plaintiff's land.

Held (MEREDITH, J., dissenting) that the measure of damages was the whole amount due on the mortgage: but judgment should be for payment of the amount into Court, so that, if paid, it might reach its proper destination.

Per MEREDITH, J.: Judgment should be simply for a reference to ascertain what, if anything, the plaintiff was entitled to recover for breach of the covenant sued on, reserving further directions and costs.

C. D. Scott, for the plaintiff.

No one for the defendants.