damages, and $8.97 costs, recovered in the Eleventh Division Court for the United Counties of York and Peel against the said plaintiff Robinson by the said defendant Shields, the above defendant entering satisfaction or giving receipt therefore upon grounds disclosed in papers and affidavit filed.

The only affidavit filed was that of the defendant, in which he swore that he did, on the 18th day of May last past, recover against the above named plaintiff a judgment for the sum of $100, and costs of suit, which said costs amount to $8.97 cents, in the Eleventh Division Court for the United Counties of York and Peel; that on the said 18th day of May a writ of execution upon the said judgment was duly issued out of the said Division Court by the clerk thereof, which said writ was directed to Robert Broddy, a bailiff of said court, and commanded him to levy the sum of $108.97, damages and costs, of the goods and chattels of the said defendant; that on the 19th day of the said month of May, the said bailiff returned the said writ of execution *nulla bona*; that the above named plaintiff in this cause recovered a judgment of this Honorable Court on the 3rd day of July, 1865, against deponent for the sum of $468.49, damages and costs; that deponent was desirous of setting off against the plaintiff's judgment in this cause the said judgment recovered by deponent in the Division Court; that if not allowed to set off the said judgment against the plaintiff's judgment herein, that he, deponent, would lose the whole amount of said judgment; that no part of said judgment and costs recovered in said Division Court had been paid.

Robert A. Harrison showed cause and contended that as Division Courts are not Courts of Record, a judgment in a Division Court cannot be set off against a judgment in a Superior Court of Record.

D. McMichael supported the summons, and argued that the right invoked is an equitable one, and ought to be allowed without reference to the question whether or not the judgments proposed to be set off were judgments of Courts of Record. He referred to *Harrison* v. *Bainbridge*, 2 B. & C. 800.

Richards, C. J.—I am told there is no precedent for this application, still I think it must be granted. The right to set off judgments is an application to the equitable jurisdiction of the Court, and in a case like the present ought to be admitted. No question arises here as to the attorney's lien. The summons, therefore, will be absolute.

Summons absolute.

Cunningham v. Cook et al.

Trespass qu. cl. fr.—Injunction—When to be granted—When refused.

The plaintiff's claim to a writ of injunction in trespass to realty can only be supported on his showing a legal right to the premises in question, that the defendants are infringing that right, and that the remedy which he could obtain by judgment and execution in the suit would be inadequate, as, in the meantime, great, if not irreparable injury might, and probably would be done to his, the plaintiff's property.

Where defendants, in answer to an application for an injunction, showed a decree in Chancery and a vesting order displacing the only right plaintiff set up as the foundation of his application for the writ, his summons was discharged with costs.

[Chambers, August 2, 1865.]

On the 23rd day of May, 1865, the plaintiff issued a writ of summons out of the Court of Common Pleas against the defendants, commanding them to enter an appearance in the said Court at the suit of the plaintiff.

It was endorsed that the plaintiff claimed one hundred pounds damages, and one pound five shillings costs, and also that the plaintiff intended to claim a writ of injunction to restrain the defendants from removing the earth and stones from off lot number six in Oliver's survey in the town of Guelph, in the county of Wellington, being the lands and tenements of the plaintiff, and from committing any further waste or spoil thereon, and that in default of defendants' appearing, the plaintiff might besides proceeding to judgment and execution for damages and costs, apply for and obtain such writ.

By an endorsement on this writ it appeared that all the defendants except Cook and Oak were served by the plaintiff with the writ on the 25th of May, and Oak on the 27th of May. The service was abandoned, and on the 7th of June all the defendants except Cook were served by James Cunningham, and Cook was served on that day by the plaintiff.

On the 25th of July, 1865, the plaintiff in person obtained a summons returnable on Tuesday the 1st of August, calling on the defendants to shew cause why a writ of injunction should not issue to restrain them from the commission of all acts of trespass on lot number six in Oliver's survey in the town of Guelph, in respect of which this action is brought.

This was granted on an affidavit of the plaintiff's originally sworn on the 25th of July; but being defective in the description or addition of the deponents, was allowed to be resworn, and the case to proceed as if originally right.

In this affidavit the plaintiff swore that in 1856 he purchased a house and a quarter of an acre of land in the town of Guelph, being number six, Oliver's survey, from Michael Allen, and "*ever since remained in possession* of said lot, save and except about eighteen months the said lot was in possession of my daughter Elizabeth." That some time in March, 1862, he again became the owner of the said lot.

That in October, 1863, the said lot was sold by order of the Court of Chancery for a debt claimed as due to Buchanan, Harris & Co., and the lot was purchased by one Watson for the *plaintiff's* (meaning it is presumed plaintiff in the Chancery suit) executors, but Isaac Buchanan, the managing executor of Buchanan, Harris & Co., "told me," (the plaintiff) that unless he got a clear title he was not compelled to take it or pay for it.

The affidavit then stated that a vesting order was applied for in the Court of Chancery; that the Chancellor stated that if he granted a vesting order he could not grant a title deed, as he considered Allan was the person to grant that; that no judgment was given in plaintiff's hearing on that occasion, and plaintiff had never since heard of his granting any order, and had never been served with any such order.