

Full Court.]

GARDEN v. NEILY.

[March 8.

*Principal and agent—Transfer of property by agent in excess of authority—
Right of principal to recover—Costs—Detinue—Special damage.*

Plaintiff placed a mare in the custody of B. for sale with permission to make use of her pending the finding of a purchaser.

Held, 1. B. was not justified in parting with the property otherwise than as authorized, and that plaintiff was entitled to recover against defendant, who, by pressure, induced B. to make use of the property so entrusted to him for the payment of his own debt.

2. The trial Judge was right in assessing damages for the detention of the mare as well as for the value.

3. The action on plaintiff's part being for the enforcement of a legal right, and there being no omission or neglect on his part, that the trial Judge was wrong in depriving him of costs.

4. The discretion of the Court in relation to costs must be exercised judicially, and that the fact that defendant and B. were principal and agent, and that B. acted in good faith was not sufficient reason for depriving plaintiff of costs to which he was otherwise entitled.

Per MEAGHER and HENRY, JJ., MEAGHER, J., dissenting, that in detinue damages for the loss of the use of any species of personal property may be recovered without an allegation of special damage.

W. E. Roscoe, Q.C., for appellant. *J. A. Fulton*, for respondent.

Townshend, J. In Chambers.

[April 28.

MURPHY v. MONASTERY, ETC., OF THE PRECIOUS BLOOD.

Cy-pres—Legacy—Particular purpose.

The testatrix by her last will made the following bequest: "I direct my executors to expend the sum of six thousand dollars towards the establishing in Halifax a house of the Nuns of the Precious Blood." Under the rules of the Roman Catholic Church, to which the said community belongs, the permission of the head of the diocese must first be obtained before any religious community can be established in the diocese. On application by the above-mentioned order, whose head house is in Quebec, to the Archbishop of Halifax for permission to open a house there, the Archbishop by letter dated February 9th, 1897, refused to grant permission until he could be assured that the community had such means as would make them self-supporting. The executors took out an originating summons asking for directions.

On behalf of the residuary legatees it was contended that by reason of the inability of the nuns to obtain the permission of the Archbishop the legacy had lapsed into the residue, and that the doctrine of *cy-pres* did not apply: *In re White's Trusts*, 33 Ch. D. 449. Counsel for the nuns contended that the bequest might be applied to the uses of the order elsewhere than in Halifax, that the permission of the Archbishop was not necessary as the money was to be expended only "towards" the establishment of a house in Halifax, and in any case that the bequest should remain in the hands of the executors until further opportunity were given to the nuns to establish themselves in Halifax.