

to set up the defence that all he did was done in the belief, on reasonable and probable grounds, that the plaintiff had committed an offence against the Criminal Code for which she might be arrested by him without a warrant; and, if that were so, he may have been justified in making the arrest, whether the offence had been committed or not. But such a defence was not permitted to be relied on.

There may have been some misunderstanding, or counsel for the defence may not have stated their point clearly; but that was not a sufficient reason for depriving the defendant of any defence he desired to make based upon sec. 30 of the Code.

In all cases, the real matters in question between the parties should be determined, and that was not done.

The defendant should have been allowed to rely upon the provisions of the Code; and leave to amend should, if necessary, have been given.

The application for a new trial was based in part on the discovery of new evidence; and, while it might not have been granted for that alone, yet it would be satisfactory to have a fuller and better trial in that respect.

The judgment and verdict should be set aside, and there should be a new trial, with leave to both parties to amend the pleadings.

All costs to be costs in the action.

SECOND DIVISIONAL COURT.

SEPTEMBER 22ND, 1916.

COX COAL CO. v. ROSE COAL CO.

Judgment—Summary Judgment—Stay of Execution—Trial of Cross-Claims Made by Defendants—Set-off—Terms.

Appeal by the defendants from an order of MASTEN, J., in Chambers, allowing an appeal from an order of one of the Registrars, sitting for the Master in Chambers, whereby the plaintiffs' motion for summary judgment was dismissed. The order appealed from awarded the plaintiffs summary judgment for \$18,893.34.

The appeal was heard by MEREDITH, C.J.C.P., MAGEE and HODGINS, J.J.A., and LENNOX, J.

W. N. Tilley, K.C., for the appellants.

J. Jennings, for the plaintiffs, respondents.