

Chancery Division.

Div'l. Court]

[March 26.

BEATTY v. RUMBLE ET AL.

False Arrest—Malicious prosecution—R.S.C., c. 164, s. 50—Larceny—R.S.C., c. 174, s. 25—Apprehension without warrant—Finding of jury.

Plaintiff, who was acting as a bailiff under a landlord's warrant to distrain for rent, attempted to remove some grain which had been seized by a sheriff under an execution, and, while in the act, was arrested by the sheriff's officer who happened to be a county constable. He was committed for trial and tried, but acquitted.

In an action for false arrest and malicious prosecution, it was

Held, that the grain was property under lawful seizure and in the custody of the law, and that by R.S.C., c. 164, s. 50, any one taking it away without lawful authority was guilty of larceny, and that by R.S.C., c. 174, s. 25, any one found committing such an offence might be apprehended without a warrant and forthwith taken before a justice of the peace, and that the finding of the jury that the defendant acted as a sheriff's bailiff and not as a constable was immaterial, as it was incumbent on any bystander to do as he did, and the action was dismissed with costs.

John Macgregor for the plaintiff.

Louni, Q.C., and *Milligan*, for defendants.

ROBERTSON, J.]

[June 30.

MOOT v. GIBSON.

Covenant—Joint—Right to enforce—Receiver—Appointment of.

G., being the owner of certain property, conveyed it to B. in consideration of the assignment by B. to her three sons of certain interests he had in lands in Assiniboia, part of the bargain being that the three sons should secure to her (G.), by a mortgage on the property assigned to them, an annuity of \$150 a year for her life. The arrangement was evidenced by an agreement in writing between G., her three sons, and B., in which G. and her sons all joined in a covenant with B. to give the mortgage to secure the annuity, but there was no agreement with

her as a promisee that the annuity should be paid or the mortgage given.

On a motion by the judgment creditor to have a receiver appointed to receive the annuity, in which it was contended that because G. was a covenanting party with the sons there was no agreement which she could enforce against them, and consequently nothing receivable from them, it was

Held, following *Gandy v. Gandy*, 30 Ch.D., at p. 69, that the true construction of the agreement was to give G. a right to a mortgage as security for the payment of her annuity and to maintain an action in her own name against her three sons for the enforcement of the covenant.

Held, also, that the conveyance of her property was the consideration for the payment by the sons of the annuity as evidenced by the agreement, and that even if they did not give the mortgage to secure it as agreed she would be entitled to maintain an action to enforce payment.

And a receiver was appointed.

Collier for the plaintiff.

Marsh, Q.C., for the defendant.

MACMAHON, J.]

[Aug. 15.

STOTT v. LANCASHIRE FIRE INSURANCE CO.

Insurance—Conditions—Material to the risk.

Action on interim receipts of the defendants.

The application, signed by the agent of the insured, contained the question :

13. Have you ever had any property destroyed or damaged by fire? If so, when and where?

The answer was, No.

This was, in fact, untrue, as the insured had suffered from fires to other properties of his; and on the matter being referred to them, the jury found that the answer was material to the risk.

Held, that this matter was to be regarded with reference to R.S.O., 1887, c. 167, s. 11 s-s. 1; and that it was for the judge to say, whether or not, in the light of the condition then set out, the above answer was material to the risk; and *held*, that it was not.

D. McCarthy, Q.C., and *Wyld*, for the plaintiff.

J. K. Kerr, Q.C., and *McLean*, for the defendants.