

on examination admitted that since the recovering of the judgment, he had means to pay it. Plaintiff then made an affidavit setting out this fact and applied ex parte for an order to imprison the defendant under sec. 32, s-s. 1, which provides for the imprisonment of any person making default in payment of any sum due from him in pursuance of any order or judgment of the Court, provided "that the person making default has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects to pay the same." The County Judge ordered the imprisonment of the defendant.

The matter was re-heard before TUCK, J., who discharged defendant on the ground that all the circumstances had not been revealed at the previous hearing.

Montgomery, for plaintiff.

Skinner, Q.C., for defendant.

EQUITY COURT.

BARKER, J.]

[St. John, Feb. 25.]

IN RE HOPPER, INFANTS

Practice—Equity Act, 1890, sec. 175—Equity will not grant license to sell real estate for benefit of infants where there are debts remaining unpaid.

The petitioner was the administratrix of the estate of the infants' father. No personal estate existed, and the real estate consisted of a farm valued at about \$1,200, but subject to a mortgage of over \$600. The petition disclosed the fact that the intestate left debts unpaid amounting to \$224. Leave was asked to sell the real estate on the ground that it was necessary for the infants' support and to prevent deterioration of the value of the property.

Held, that as there were outstanding debts remaining unpaid the Probate Court was the proper tribunal to adjudicate upon these debts; that the Equity Court could not order the property sold and the money paid to the infants until the debts were paid; that the Equity Court could not order the moneys received under sec. 175 of Equity Act, 1890, to be paid out in any way except for the benefit of the infants; and that the license applied for should have been asked of the Probate Court, or (under the circumstances) the estate wound up in the Probate before applying to the Equity Court.

Application refused.

Barnhill, for applicant.

BARKER, J.]

[St. John, Feb. 27.]

HEGAN v. MONTGOMERY.

Practice—Production of documents—The correct practice to compel production of documents is under sec. 59 of Equity Act, and not under sec. 61, in the first instance.

The plaintiff filed a bill in equity against defendant to set aside a release executed by the plaintiff, on the ground of fraud; and also for an accounting. On January 11th, defendant obtained a summons under sec. 61 of the Equity