

Held, that the land in question was not exempt from the operation of the judgment, as neither the judgment debtor nor his family resided upon or cultivated it, and that it was impossible to extend the operation of the Exemptions Act beyond the strict construction of its language.

Perdue, for plaintiffs.

McKercher, for defendant.

TAYLOR, C.J.]

[April 29.

FOULDS *v.* CHAMBERS.

Garnishment—Landlord and tenant—Setting aside order—Parties—Amendment—Notice of assignment under 4 & 5 Anne, c. 16, sec. 10

One Henry Foulds, in 1893, leased a parcel of land to the defendant, and on the 1st of April, 1895, \$90 was due for rent of the premises. Henry Foulds, however, had in 1893 assigned the reversion to trustees for the plaintiff, and defendant, as the learned Judge found, had notice of the assignment.

After the rent fell due a judgment creditor of Henry Foulds obtained an order attaching the rent due by defendant, and in May following an order was made for the payment of the \$90 to the judgment creditor; no one appearing to show cause, so far as the order showed. Thereupon the defendant paid the rent as required by the order. The plaintiff then brought this action to recover the \$90. To her claim it was objected:

1. That the payment was a good defence so long as the order stood. This objection was overruled, and *Re Smith*, 20 Q.B.D. 321, upon which defendant relied, distinguished.
2. That plaintiff before suing should have taken proceedings under Order 425 of the Queen's Bench Act, 1895, to set aside the attaching order. This objection was also overruled.
3. That the plaintiff was not entitled to bring this action, and that it should have been brought by the trustees.

Held, that this contention was correct, but that leave to amend by adding the trustees as plaintiffs, should be allowed under Rule 338, Q.B. Act, 1895. *Gandy v. Gandy*, 30 Ch. D. 57; *Woodward v. Shields*, 32 U.C.C.P. 287; and *McGuin v. Fretts*, 13 O.R. 699, followed.

4. That notice of the assignment should have been given by the trustees, as required by the statute 4 and 5 Anne, c. 16, sec. 10.

Held, as to this objection, that, as defendant had notice of the assignment, it should not be given effect to *Lumley v. Hodgson*, 16 East 99.

Ordered that upon plaintiff filing within a week the written consent of the trustees to be added as co-plaintiffs, the statement of claim be amended accordingly, and judgment entered for the plaintiffs for the amount sued for and costs, except any costs of making the amendment.

Howell, Q.C., and *Machray*, for plaintiff.

Hagel, Q.C., and *Howden*, for defendant.