

DUBUC, J.]

[April 15.]

## GRUNDY v. GRUNDY.

This was an appeal from the order of the referee, striking out the plaintiffs' third replication as embarrassing. The defendant filed a counterclaim for damages, upon a covenant that the plaintiffs would pay the liabilities of the former firm, composed of the plaintiffs and the defendant, to the Commercial Bank of Manitoba. No time had been fixed within which these liabilities were to be paid, but the defendant set up that the plaintiffs had failed to pay the same, and that the bank held the defendant liable for them, and had threatened to sue the defendant for the same, and that his credit was unfavourably affected by the fact of the said liabilities standing against him, and he claimed damages in respect thereof.

The plaintiffs, in answer to this, set up that they had paid off about two-thirds of the original liability, and that the balance would be paid in the ordinary course of business in a short time, and that the plaintiffs had given ample security to the bank for such balance, and that the bank had not in any way called upon the defendant to pay or satisfy the said debt, and had not threatened or intended to sue or harass the defendant therefor.

Held, that this replication was good, and that the appeal should be allowed, and the order of the referee set aside with costs to be costs to the cause to the plaintiffs in any event.

*Cullin v. Rinn*, 5 M.R. . . ; *Leith v. Freeland*, 24 U.C.Q.B. 132 ; *Lethbridge v. Mytton*, 2 B. & Ad. 772, distinguished, on the ground that the covenants sued upon in these cases provided for payment within a fixed time, whereas in the present case no time was fixed within which the plaintiffs were to pay the liability in question, and, if defendant had not been called upon to pay it, or any part of it, he had suffered no damage.

*Howell*, O.C., and *Metcalfe* for the plaintiffs.

*Mathers* for the defendant.

BAIN, J.]

[April 16.]

## FROST v. DRIVER ET AL.

*Exemptions*—A registered judgment may be a lien on lands, although temporarily exempt from sale thereunder.

In this case it was held that the registration of a certificate of judgment constitutes a lien and charge upon the lands of the judgment debtor, even although he actually resides thereon and cultivates the same, either wholly or in part, and the effect of s. 12 of the Judgments Act, R.S.M., c. 80, is simply that, as long as the judgment debtor actually resides upon the land, no proceedings can be taken to realize on the land under the registered judgment, but the same is still a lien and charge thereon, and the district registrar would not be warranted in issuing a certificate of title for the land, free from such lien or charge.

*Martin* for the petitioners.

*Clark* for the respondents.