

defendant, whom the plaintiff owes as her two brothers had done.

His Honour Judge Denton dismissed the motion, and in doing so we think he was right.

The answers of the defendant were frank and full, giving all the information she had and the reasons for her act. See *Herdman v. Fewster*, [1901] 1 Ch. Div. 447. The objection by defendant's counsel that it did not appear that an execution had been placed in the sheriff's hands and *nulla bona* returned, relying upon *Ontario Bank v. Trowern*, 13 P. R. 422, is not, we think, well taken, inasmuch as a judgment creditor is *prima facie* entitled to issue an appointment for the examination of his judgment debtor; and, upon a motion to commit the latter for refusal to be sworn, it is for him to shew affirmatively that the issue of the appointment was an abuse of the process of the Court. *Grant v. Cook*, 17 P. R. 362.

Under all the facts in this case, this motion should be dismissed with costs.

HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE KELLY, agreed.

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COURT OF APPEAL.

NOVEMBER 19TH, 1912.

REX v. MURRAY & FAIRBAIRN.

4 O. W. N. 368.

*Criminal Law—Motion for New Trial—Conviction for Burglary—Criminal Code, sec. 1021—Meaning of Term "Verdict"—Two Defendants—Joint Trial—Court not Bound to Consider Cases Together—New Trial in One Case and not the Other.*

Motion on behalf of defendants, tried together in the County Judge's Criminal Court in London and convicted of burglary and theft, for a new trial, made by consent of the trial Judge under sec. 1021 of the Code. It was urged on behalf of defendants that if either of them were granted a new trial because of a conviction against the weight of evidence, both must be, as they were tried together.

COURT OF APPEAL, *held*, that the rule above referred to on behalf of defendants, applied to cases of conspiracy only, and the case of each defendant must be considered on its merits.

*Reg. v. Fellowes*, 19 W. C. R. 54, and other cases referred to.

Upon the merits, the Court came to the conclusion that defendant Fairbairn was entitled to a new trial and defendant Murray not entitled, and so ordered.

*Quære*, if the word verdict, in sec. 1021 of the Code, applies to a decision of a Judge, on the facts, sitting without a jury?

Discussion of question by MACLAREN and MEREDITH, J.J.A.