

quent upon the defendants' appeal from the judgment having been set down to be heard.

Rule 496: "Unless otherwise ordered by a Judge of a Divisional Court, the execution of the judgment appealed from shall, upon an appeal being set down to be heard, be stayed, pending the appeal. . . ."

M. L. Gordon, for the plaintiff.

J. P. MacGregor, for the defendants.

SUTHERLAND, J.:—A motion to remove stay of execution pending an appeal from an order of a County Court Judge granting the plaintiff's motion for judgment on a specially endorsed writ, under Rule 57. The learned County Court Judge, on the material before him, came to the conclusion that the defendants were really not bonâ fide contesting the plaintiff's claim but merely seeking to gain time. It is said that he was asked to stay execution pending an appeal, and declined to do so.

While in a case where a defendant has sworn to a valid defence there is the right to an unconditional defence: *Jacob v. Booth's Distillery Co.*, 50 W.R. 49, 85 L.T.R. 282; *F. J. Castle Co. Limited v. Kouri* (1909), 18 O.L.R. 462; a perusal of the material leads me to the same conclusion as the County Court Judge, that no real or valid defence is deposed to, and that there should be no stay of the execution.

The order will go as asked accordingly.

HIGH COURT DIVISION.

MIDDLETON, J.

JUNE 16TH, 1914.

HERRIES v. FLETCHER.

Contract—Alleged Agreement to Devise Farm—Services Rendered by Expectant Devisee—Remuneration—Action to Enforce Agreement against Executors—Evidence—Corroboration—Intention of Testator—Failure to Prove Contract—Statute of Frauds—Quantum Meruit—Alleged Gift of Chattels and Promissory Note—Possession not Changed—Costs.

Action against the executors of John Fletcher, deceased, for specific performance of an alleged agreement between the plaintiff and the deceased.