

assignment, when it passed as chattels to their assignee, who transferred it as chattels to M.G., and she to the plaintiffs; that the forfeiture of the term did not affect the right to the property, nor the right to remove it; that nothing had taken place to defeat that right, and the plaintiffs were in good time to exercise it.

The defendants, being in possession of the machinery, and being asked for it by the plaintiffs, asserted title in themselves, and warned the plaintiffs that if proceedings were taken they would set up such title.

*Held*, that a wrongful detention of the goods was shown, and this action therefore lay.

*Moss, Q.C.*, and *A. W. Anglin* for the plaintiffs.

*McCarthy, Q.C.*, and *H. S. Osler* for the defendants.

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FERGUSON, J.]

[Jan. 27.]

IN RE KERR v. SMITH.

*Prohibition—Division Court—Action upon order in High Court for payment of costs—Judgment—Rules 866, 934.*

Prohibition granted to restrain the enforcement of a judgment in a Division Court in an action brought upon an order of a judge in an action in the High Court ordering the defendant in the Division Court action to pay certain costs of an interlocutory motion.

Notwithstanding the broad provisions of Rule 934, an order of the court or of a judge is not for all purposes and to all intents a judgment; and no debt exists by virtue of such an order as was sued on here.

Rule 866 means that an order may be enforced in the action or matter in which it is, as a judgment may be enforced, and does not extend to the sustaining of an independent action upon the order.

*E. D. Armour, Q.C.*, for the plaintiff.

*W. H. Blake* for the defendant.

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FERGUSON, J.]

[Nov. 16, 1893.]

TENUTE v. WALSH.

*Devolution of Estates Act—R.S.O., c. 108, s. 9—54 Vict., c. 18, s. 2—Powers of executor—Exchange of lands—Contract—Specific performance.*

An executor or administrator cannot, having regard to R.S.O., c. 108, s. 9, and 54 Vict., c. 18, s. 2, make the lands of the testator or intestate the subject of speculation or exchange by him in the same manner as if the lands were his own.

And the court refused to decree specific performance of a contract by an executor to exchange lands of his testatrix for other lands, as the purpose of the exchange could not have been the payment of debts or the distribution of the estate, and it was shown that the beneficiaries objected to the exchange, and it did not appear that the official guardian had been consulted.

Costs withheld from the defendant because he had misled the plaintiff as