

*Held*, while under s.-s. 2 of s. 79 of R.S.O. c. 60, a plaintiff might sue separately for the principal and interest due, he must sue for the whole and not portions of either.

*Held*, also, that the claim of the primary creditors against the primary debtor being as assignee of a covenant their claim was not for interest due on a mortgage, and that the section did not apply. Judgment of Robertson, J., reversed.

*Stonehouse*, for the appeal. *Mickle*, contra.

Armour, C. J., Falconbridge, J., Street, J.]

[Sept. 12.]

CREIGHTON v. SWEETLAND.

*Security for costs—Sheriff—Public duty—R.S.O. c. 89, s. 1.*

A sheriff executing a writ of fi. fa. is not an officer or person fulfilling a public duty within the meaning of R.S.O. c. 89, s. 1, and is not, therefore, entitled to security for costs of an action brought against him for negligence in not making a seizure under the writ.

*McWhirter v. Corbett*, 4 C. P. 208, followed.

*Biggs*, Q.C., for the plaintiff. *H. M. Mowat*, for the defendant.

Leave to appeal refused by the Court of Appeal, Sept. 19.

ELECTION CASES.

OTTAWA PROVINCIAL ELECTION.

RANDAL v. POWELL.

*Time for presenting petition—Service of notice of presentation of petition—Con. Elect. Act, ss. 9, 15, 135.*

*Held*, 1. The return required to be made to the Clerk of the Crown in Chancery by the returning officer is made when received by such clerk, and not when placed in the express office or in the post office for the purpose of transmission.

2. The omission to serve a separate notice of the presentation of a petition is not fatal to the proceedings, when a copy of the petition itself has been duly served, with the endorsement "This petition is filed," etc.

[May 9, 1898. OSLER, J.A.]

This was an application to set aside the petition. Two objections were made to the proceedings:

1. That the petition was presented too late because not presented as it is said within 21 days "after the return has been made to the Clerk of the Crown in Chancery of the member to whose election the petition relates," as required by s. 9 of the Controverted Elections Act, none of the conditions arising which permit of a presentation at a later date.

2. That no notice of the presentation of the petition was served with the copy of the petition as required by s. 15 of the Act.

*W. Nesbitt*, for the motion. *Watson*, Q.C., contra.

OSLER, J.A.: In support of the first objection it was contended that the return to the Clerk of the Crown in Chancery is "made" within