

*Held*, following *Johnson v. Hope*, 17 A.R., 10, that the mortgage was not void against creditors, under s. 2 of R.S.O., c. 124.

*Garrow*, Q.C., for plaintiff.

*M. C. Cameron* for defendant, McDonald.

*Maybee* for defendant, Heffernan.

STREET, J.]

[May 1.

ROSE *v.* TOWNSHIP OF WEST WAWANOSH.

*Municipal corporations—By-law authorizing taking of gravel without specifying lands—*

*Illegality—R.S.O., c. 184, s. 550, s-s. 8; s. 338—Injunction without quashing by-law.*

By s. 550, s-s. 8, of R.S.O., c. 184, the council of every township is authorized to pass by-laws for searching for and taking such timber, gravel, stone, or other material or materials as may be necessary for keeping in repair any road or highway within the municipality.

*Held*, that the meaning of this section is that the council may, as necessity arises for their doing so, exercise the right to take gravel, etc., from any particular parcel or parcels of land, having first declared the necessity to exist, and chosen and described the land from which the material is to be taken by a by-law, and therefore a by-law purporting to be passed under this section, which authorized and empowered the pathmasters and other employees of the corporation to enter upon any land within the municipality, when necessary to do so, save and except orchards, gardens, and pleasure-grounds, and search for and take any timber, gravel, etc., was upon its face illegal, because it purported to confer upon its officers wider and more extensive powers than the statute authorized.

*Held*, also, notwithstanding the provisions of s. 338 of R.S.O., c. 184, that the plaintiff was entitled, without quashing the by-law, to an injunction to restrain the defendants from proceeding to enforce the rights they claimed under this by-law by entering upon his lands.

*Garrow*, Q.C., for plaintiff.

*M. C. Cameron* for defendants.

ROBERTSON, J.]

[April 29.

RE INGOLSBY.

*Will—Execution—Construction—Election under devolution of Estates Act.*

B. I. died intestate June 15, 1889. His wife died August 31st following, having made

her will August 28th, in which she elected to take a distributive share of her husband's estate in lieu of dower.

*Held*, that although the will must be construed to speak as if executed immediately before the death in regard to the real and personal estate comprised therein, it took effect and became operative immediately after its execution in regard to the declaration of election, and that such declaration was a good declaration under sec. 4 (sub-sec. 2) of the Devolution of Estates Act.

*McKechie* for the executor of the widow.

*J. Hoskin*, Q.C., for the infants.

## Practice.

[May 10.

GALT, C.J.]

ATTORNEY-GENERAL *v.* ÆTNA INSURANCE COMPANY.

*Interest—Fire insurance—Reference—Powers of referee.*

In an action upon fire insurance policies, a referee was directed to inquire, ascertain, and report the amount of the loss.

*Held*, having regard to the provisions of ss. 87 and 103 of R.S.O., c. 44, that the referee had authority to allow interest on the amount of the loss, as ascertained by him.

*Irving*, Q.C., for plaintiff.

*W. B. Raymond* for defendants.

[May 20.

ROSE, J.]

HUDSON BAY CO. *v.* HAMILTON.

*Appearance—Notice of, where entered late—Judgment for default—Rule 281.*

Judgment may be signed under Rule 281 for default of appearance, where an appearance has been entered after the time limited, if no notice has not been given as required by the Rule and the knowledge of the fact that an appearance has been entered, does not constitute such notice as the Rule requires.

*Smith v. Dobbin*, 3 Ex. D. 338, followed.

*Lanark and Drummond Plank Road Co. v. Bothwell*, 2, U.C.L.J.O.S. 229, not followed.

*A. C. Galt* for the plaintiffs.