

SMITH v. FRANKLIN.

Landlord and tenant—Taxes—Distress therefor by municipality—Fourteen days demand—Damages recoverable by tenant—Irregularities in making distress—Liability of landlord—Covenant for quiet enjoyment.

The demand for taxes required to be made by the municipality fourteen days prior to distress, under s. 123 of the Assessment Act, R.S.O., c. 193, is satisfied by a demand made before the payment of the first instalment.

The fact that s. 24 enables the occupant to deduct from the rent taxes payable by the landlord does not limit him to such remedy, so as to prevent his bringing an action against the landlord for the recovery of the damages sustained by him by reason of a distress made for said taxes by the municipality, but such damages are restricted to the amount of the taxes paid to remove such distress, and do not include consequential damages.

No liability is imposed on the landlord by reason of irregularities by the municipality in making the distress, in the absence of any fraud by the landlord.

The distress does not constitute a breach of the covenant for quiet enjoyment in the Short Form lease, for, in distraining, the municipality is not claiming by, from, or under the landlord.

R. G. Smyth for the plaintiff.

Shepley, Q.C., *contra*.

REGINA v. FEARMEN.

The Liquor License Act—Evidence of license inspector laying information, and of defendant—Admissibility of—Indian reserve.

For an offence under the Liquor License Act, R.S.O., c. 194, the evidence of a license inspector who lays the information is admissible, for he has, under the Act, no interest in the penalty; but, apart from this, he is a competent witness under s. 2 of the Evidence Act, R.S.O., c. 74, which removes all disability by reason of interest; but the evidence of the defendant here was inadmissible, following *Regina v. Hart*, 20 O.R. 611, and *Regina v. Bittle*, 21 O.R. 605, and that the amending Act, 55 Vict., c. 14, s. 1 (O.), did not apply as passed after the trial and conviction.

The conviction was for selling liquor without a license at the village of M., in the township

of O., and it was objected that such township comprised an Indian reserve, within which the Liquor License Act was not in force, and therefore the conviction should have negated the offence having been committed therein; but there was nothing in the evidence to show this, and by s. 1 of R.S.O., c. 5, there was *prima facie* jurisdiction; the objection was therefore held untenable.

DuVernet for the defendant.

Langton, Q.C., *contra*.

TRIMBLE v. MILLER.

Division courts—Judgment for amount beyond jurisdiction of court—Prohibition for excess only—Promissory note—What constitutes.

Judgment was recovered in the Division Court for \$108.63, being \$100 balance due and \$8.63 interest under the following instrument signed by defendants: "To G.T. We hereby undertake to pay the executors of the late J.D.K. the sum of \$375 on a mortgage they hold against the Royal Hotel property, Streetsville, thereby reducing the mortgage to \$2,000."

Held, that the document, even if a promissory note under s. 82 of the Bills of Exchange Act, 53 Vict., c. 33 (D.), which was open to doubt, only inured to the benefit of K's executors, and not to G.T., and therefore the action must be deemed to be for a breach of contract, in which the jurisdiction of the Division Court is limited to \$106, and therefore the judgment was in excess of the jurisdiction, but that prohibition must be limited to the excess, namely, the \$863.

Aylesworth, Q.C., for the plaintiff.

Justin and Blain for the defendants.

REGINA v. MCGOWAN.

The Liquor License Act—Reeves of municipalities in unorganized districts—Ex officio justices of the peace—Right to try alone offences against the Act.

The reeves of municipalities in unorganized districts are, under the legislation relating thereto, *ex officio* justices of the peace in their respective municipalities, with power to try alone and convict for offences under the Liquor License Act, R.S.O., c. 194.

Hewson for the applicant.

Langton, Q.C., *contra*.