not paid forthwith, then, inasmuch as it had been made to appear on the admission of the defendant that he had no goods whereon to levy the sums imposed by distress, that he should be imprisoned for three months unless these sums and the costs and charges of conveying him to gaol should be sooner paid. An amended conviction was afterwards drawn up and filed, from which the parts relating to distress and the costs of conveying to gaol were omitted. A warrant of commitment directed the gaoler to receive the defendant and imprison him for three months, unless the said several sums and the costs of conveying him to gaol should be sooner paid.

Upon a motion to quash the convictions and warrant,

Held, that the mode adopted for bringing the defendant before the justices was not a ground for quashing the conviction; and *semble*, also, that it was not improper to arrest him instead of merely summoning him.

Held, also, that the fact that the defendant was remanded by only one justice could not affect the conviction.

Semble, that the justices had no power under R.S.O., c. 194, s. 70, to issue a distress warrant or to make the imprisonment imposed dependent upon the payment of the fine and costs; but as this objection was not taken by the defendant, no effect was given to it.

Held, also, that the justices had the right to draw up and return an amended conviction in a proper case.

Held, also, that if the justices were bound to issue a distress warrant, the insertion of the words relating to the admission of the defendant that he had no goods, was proper; and if they had no power to issue a distress warrant, these words were mere surplusage, and did not vitiate the conviction.

Held, also, that if the justices had no power to require the costs of conveying him to gaol to be paid by the defendant, the conviction was amendable, as and when it was amended; for the amendment was not of the adjudication of punishment.

Held, lastly, that having regard to s. 105 of R.S.O., c. 194, and to the evidence before the justices, the convictions and warrant should not be quashed.

Alan Cassels for the defendant.

Langton for the complainant.

Div'l Court.] [June 27.

EDMONDS *v.* HAMILTON PROVIDENT AND LOAN SOCIETY.

Mortgagor and mortgagee—Application of insurance moneys—Acceleration clause in mortgage—Election not to claim whole principal, R.S.O., c. 102, s. 4, s-s. 2—Interest, time of commencement—Mortgage account—Rectification of mortgage—Laches—Agreement—Local agent and appraiser, powers of—Wrongful sale under power in mortgage—Illegal distress—Measure of damages.

Upon a motion for an interim injunction the defendants filed an affidavit and statement showing that they had applied insurance moneys received by them, in respect of loss by fire of buildings upon land mortgaged to them by the plaintiffs, upon overdue instalments of principal, and an insurance premium paid by them; and in their statement of defence they also stated their position in a way inconsistent with that which they afterwards took, viz., that the insurance money was applicable upon the whole principal, which, by virtue of an acceleration clause in the mortgage had become due.

Held, that the defendants had made their election, so far as the effect of the default and the application of the insurance money was concerned, not to claim the whole principal as having become due by reason of the default; and that being so, that they must apply the insurance money, as required by R.S.O., c. 102, s. 4, s-s. 2, upon arrears of principal and interest.

Corham v. *Kingston*, 17 O.R. 432, approved and followed.

Interest can be claimed by mortgagees only from the time the money is actually paid out by them.

Method of taking a mortgage account shown.

Rectification of the mortgage deed as to the time of the first payment of principal was refused where it was sought by the mortgagors at a time when the payment in any event was long past due, and the mortgagees, without fraud, had acted upon the mortgage as executed, and without notice of the intention of the mortgagors to have the payment fixed for a later period; and where also there was really no agreement upon which to found the rectification, the defendants' local appraiser and agent to receive applications having no express or implied authority to make such agreements.