

may be taken by him hereafter under the order of the Divisional Court. Plausible reasons have been suggested against the view of the Divisional Court. Leave to appeal granted on the usual terms.

APRIL 28TH, 1902.

DIVISIONAL COURT.

PICHÉ v. MONTGOMERY.

*Landlord and Tenant—Excessive Distress—Irregularities—Waiver—Sale for Full Value—Account of Proceeds.*

Appeal by plaintiff from judgment of County Court of Carleton in action for damages for illegal distress.

The trial Judge held that under an agreement between plaintiff and defendant Montgomery, the landlord, the former, after receipt of notice to quit, had taken certain goods as exemptions and left the rest to pay the rent, and had thereby waived all irregularities. He found \$104 due at time of seizure.

W. E. Middleton, for plaintiff.

A. D. Lees, Ottawa, for defendant.

MEREDITH, C.J.—The finding as to rent due was correct, and upon the evidence the distress was not excessive. There was evidence to support the finding below as to waiver, and therefore such finding ought not to be disturbed. The contention that the sale should have been stopped as soon as contents of barber shop had been sold because sufficient had been realized to satisfy rent, expenses, and water rates, though not taken below, fails because the goods sold for their full value and the whole proceeds were accounted for to plaintiff or his solicitor.

FERGUSON, J., concurred.

Appeal dismissed with costs.

A. E. Lussier, Ottawa, solicitor for plaintiff.

Lees & Kehoe, Ottawa, solicitors for defendant.

MAY 3RD, 1902.

DIVISIONAL COURT.

BAILEY v. GILLIES.

*Guarantee—Consideration—Novation—Statute of Frauds, sec. 4.*

Beattie v. Dinnick, 27 O. R. at p. 295, explained.

Appeal by defendants from judgment of ROBERTSON, J., in favour of plaintiff in action to recover amount due for work and labour in driving saw logs down the Madawaska river to Arnprior, for one J. McCrea, who was under contract with defendants for that purpose, and part of whose work was subsequently, by agreement with defendants, per-