

Held, that it contained no repugnancy or inconsistency: *Trust and Loan Co. v. Laurason*, 10 S.C.R. 679, distinguished.

The mortgagor, remaining in possession upon the execution of the mortgage, had the right, under the provision for quiet possession until default, to enjoy the premises, but for no determinate period, and his tenancy thereunder was a tenancy at will, and such provision was therefore not inconsistent with an express tenancy at will at a half-yearly rent.

There being a tenancy at will at a fixed rent, there was, as incident to it, the right to distrain, and the covenant for quiet enjoyment must be read as subject to such right: *Doe d. Dixie v. Davies*, 7 Ex. 89, followed.

As the mortgagor had made default, his continuance in possession was still as tenant at will.

After default, the mortgagor, at the instance of the mortgagees, assigned his equity of redemption to his wife, and she took possession and agreed to apply the proceeds of the land to the payment of the mortgage.

Held, that this operated as a new tenancy at will with the wife, who became liable for the payment of the rent as the assign of her husband with the assent of the mortgagees, and her goods were therefore distrainable for rent. So the goods of the husband might also be distrained, as it was a case of real tenancy.

Held, however, that the defendants were liable for selling the distress without appraisal or valuation; and the measure of damages was the real value of what was sold, minus the rent due.

C. H. Porter, for plaintiff. *J. Bicknell*, for defendants.

Boyd, C., Ferguson, J.] GILLIE ? YOUNG.

[Feb. 23

Life insurance—Foreign benefit society—Registration as friendly society—Certificate—Beneficiary—Change by will—Contract of insurance—Rules of society—Conflict with Ontario Insurance Act.

"The Catholic Order of Foresters" were incorporated in the State of Illinois, and had branches in Ontario, and in 1892 became registered as a friendly society in Ontario under the provisions of the Insurance Corporations Act, 1892, and had since kept their registry in force as a friendly society, and had not at any time been registered as an insurance company. A member of one of the Ontario branches was the holder of a certificate of the society whereby they promised to pay to the defendant, a brother of the holder, \$1,000 upon satisfactory proof of his death. The holder was resident in Ontario, the application for the certificate was made in Ontario, and the certificate was delivered in Ontario. The holder made a will whereby he bequeathed the certificate to the wife of one of the plaintiffs, naming the plaintiffs executors.

Held, that the Order were legally entitled to do business in Ontario; that the certificate in question was a "contract of insurance" within the