

follows:—1873 to May 1874, 1874 to May 1875, 1875 to May 1876, \$175.50 in all, and upon it interest up to 24th March, 1879, at 10 per cent., is charged by the city. \$243.10 is sued for; the action is *en déclaration d'hypothèque* against Perkins. On the 9th March, 1876, Perkins bought the land. The plea of the defendant tenders \$175.50 for 1873, 1874 and 1875, with \$1.75 for interest, and \$22.30 for costs up to plea, as in an action for \$175.50. It will be seen that increase is charged by plaintiff up to 24th March, 1879—\$67.60. Can any of it be struck off? That is the chief question. Yes, all can be struck off, says defendant, being interest (illegal) for default of plaintiff's creditors to pay money due. Any by-law for such interest is illegal and null. Not even the Quebec Legislature could legalize it, says Perkins. Yes, I say, the 10 per cent. can be struck off, but only from January 28th, 1874, when 14 & 15 Vic., c. 128, was repealed. I find after reading the 14 & 15 Vic., the 37th Vic., and the 41st Vic., that under the 14 & 15 Vic. the city had a right to make such charge of 10 per cent. against Perkins, as it does make. Its right ceased, however, with that act (14 & 15 Vic.), viz., on and from January 28th, 1874, when 37th Vic. repealed the 14 & 15 Vic. That repeal benefits Perkins, notwithstanding sec. 3 of the 41st Vic., which cannot work to affect the present case. Perkins stood freed from the 10 per cent. from January 28, 1874; so after that it was not running against him in all 1874, nor in all 1875, nor in any part of 1876. How could 41st Vic., of March, 1878, or two years afterwards, load Perkins with the 10 per cent., from which he was discharged by 37th Vic. of January, 1874? All the increase charged in plaintiff's account for the time from 28th January 1874, to the 24th of March, 1879, must be struck off. The account must be for the capital asked, and with increase of 10 per cent. from the 1st of November, 1873, to the 28th of January, 1874, on \$49.50, viz., two months and twenty-seven days. Perkins has tendered \$175.00 and \$1.75, for increase, and costs as in suit for so much. So his plea and tender are declared good, and fatal to the plaintiff's action. Costs since tender against plaintiff.

R. Roy, Q.C., for plaintiff.

Macmaster, Hall & Greenshields for defendant.

MILLOY v. O'BRIEN, and O'BRIEN, petitioner.

Petition by alleged insolvent for allowance pending contestation of writ of attachment.

MACKAY, J. On the 28th of June, an attachment issued against O'Brien under the Insolvency Act, and a quantity of lands and houses passed to the assignee, and also some omnibuses, horses, &c. The alleged insolvent is contesting the attachment, and pending that contestation, presented a petition to the Judge in Insolvency to be allowed to reap the crops on the lands seized, to collect patent fuel on the property, and to generally manage said property; that the assignee be ordered to allow him money to pay the laborers, and that petitioner be allowed \$20 a week for the support of his family, &c. It is the first petition of the kind that I have seen. I have no power to order the petitioner \$20 a week. This is over \$1,000 a year; but it is sufficient that I have no power to order it. The assignee is by the petition accused of negligence in his administration, which is that only of an interim assignee, seeing that the attachment is contested, and that no meeting of creditors has been held yet. The assignee answers the petition by denying that he has been negligent; he protests that he has done all diligence; that he has been guardian over the property all the time; that the estate has only paid him \$89, while the assignee has had to spend over \$246; that it was impossible for him, the assignee, to do more than he has done; that petitioner himself has since the attachment collected money, which he ought to have paid over to the assignee, but which he kept; that the petitioner has refused to go with the assignee to collect money due to the estate by the Post Office, &c.

I find that the estate of petitioner that has passed to the assignee is a peculiarly difficult one to wield and take care of; it is exposed very much; it consists of farm lands beyond Monklands, outside of the city limits; it has fifteen or more unoccupied dwelling-houses on it. Since the attachment some cabbages and tomatoes have been damaged, some pieces of fences and gates may have been taken away, and some damage may have been done to gardens, but all put together are trivial, and seemingly unavoidable by any but extraordinary vigilance. As to the omnibus horses said to be maltreated