of counsel in laying the information, they should find a verdict for the defendant.

The jury found for the plaintiff, and assessed the damages at $500. Upon that verdict the judgment should be entered for the plaintiff with costs and the defendant should be prevented from setting off costs.

LATCHFORD, J. APRIL 1ST, 1911.

BLANSHARD v. BISHOP.

Landlord and Tenant—Illegal Distress—Building Regarded as Chattel—Intention of Parties—Notice and Appraisement—Special Damage.

Action for damages for breach of a covenant and agreement, for illegal distress and withholding possession, and for an accounting.

H. A. Tibbetts, for the plaintiff.
A. D. George, for the defendant.

LATCHFORD, J.:—At the close of the evidence, after disposing of the claim for damages for breach of covenant, I suggested a settlement of this suit on what seemed to me a practicable and equitable basis. I have recently been informed that efforts to adjust matters between the parties have proved futile, and I now proceed to dispose of the case.

Both plaintiff and defendant intended that the building should be regarded as a chattel. It rested by its own weight on the land, and could be removed without injury to the land, though the removal integre, salve, et commode, might be difficult. The intention of the parties is, however, the governing circumstance. In Holland v. Hodgson (1872), L.R. 7 C.P. 328, Lord Blackburn says, at p. 335: "Perhaps the true rule is that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land unless the circumstances are such as to shew that they were intended to be part of the land." See also Bing Kee v. Yick Chong (1910), 43 S.C.R. 334. The building as a chattel was properly the subject of distress. But as the rent claimed was due, the distress itself was not illegal: Tancred v. Leyland (1851), 16 Q.B. 669 at p. 678. There were irregularities. No notice was given or