

THE REVISED STATUTES OF ONTARIO—DISTRESS CLAUSES IN MORTGAGES.

To say that the work has been well done, is to say that no more has been done than was to be expected from the persons to whom the work was entrusted; but the necessarily numerous judicial duties of some of the members of the Commission, must have often prevented their giving that continuous attention to the work which it demanded. The assistance, however, given by them, and in particular by Mr. Justice Patterson, Vice-Chancellor Blake, and Mr. Justice Strong, before his removal to Ottawa, has, we believe, been very considerable; nor in this connection do we desire to overlook the services of the other Commissioners, whose names have already been given.

The first consolidation after the formation of the Dominion, and the distribution of the legislative power by the British North America Act, 1867, would necessarily be attended with the gravest difficulties, and in view of this fact, and looking at the dimensions of the volumes before us, we think it extremely creditable to those engaged in the work, that it has been completed as soon as it has. In spite of his multifarious public duties as Attorney-General, Mr. Mowat has, we have good reason to state, found time to give an immense amount of personal attention and supervision to the work, as well in matters of detail as in general questions, and in every way facilitated the labours of those engaged in the preparation of the volume. His Honour Judge Gowan, with his usual energy and unflagging application, has also given much time to the work. His experience on the preparation of the Consolidated Statutes, and in the Consolidation of the Criminal Law, to say nothing of his ability and aptitude in the preparation of Acts of Parliament, was, we are told, of the greatest benefit. But whilst giving due credit to those who thus gratuitously

lent their aid, it is scarcely necessary to say that if the right man had not been found to take charge of the whole, and devote himself exclusively to the work in all its details, their assistance would have been of little practical use. We are satisfied that the right man was found in Mr. Thomas Langton, Barrister-at-Law, and we have much pleasure in stating what we know to be the opinion of at least several of the Commissioners, and we understand to be the opinion of all, that his services were invaluable. The volume is accompanied by a reasonably full and apparently well arranged index, the work, we believe, of Mr. R. E. Kingsford, Barrister-at-Law. We regret that it was not thought proper to bind the volumes more substantially. The present binding is so slight as to be almost useless for books of such constant reference.

DISTRESS CLAUSES IN MORTGAGES.

BY ALEX. LEITH, Q.C.

As the only one now at the Bar, of the counsel in the case of *Royal Canadian Bank v. Kelly*, I am frequently asked as to the grounds on which it was decided, the judgment in appeal having been lost. It has, therefore, occurred to me to give my recollection of them in the pages of the *LAW JOURNAL* and to refer briefly to the case as reported in 19 C. P. 196, 430 and 20 C. P. 519; and in appeal, 22 C. P. 279.

The case was one of replevin. The first and material avowry as set forth in 19 C. P. 196, is as follows:—

“That before the said time when, &c., one Dewey mortgaged to defendant Kelly certain lands, the mortgage containing a proviso for making the same void on payment of the amount secured by a day named, and covenant for payment, and also covenant for distress on default in payment in accordance with the