

Q.B.]

NOTES OF CASES.

[Ontario.]

Held, that *sci. fa.* would lie by a judgment creditor of the Company against a shareholder, though the general practice here is to proceed by action, for a *sci. fa.* is in fact an action.

F. Osler for plaintiffs.

Ferguson for defendant.

IN RE KENNEDY, AN INSOLVENT, MASON V. HIGGINS.

Insolvency—Claim for rent.

A landlord in case of his tenant's insolvency, has no privilege or preference for rent over any other claim; his only protection lies in his right to a preferential lien on property on the demised premises.

On the facts set out in this case, it was held that there was no ground for ordering the assignee to place the claim for rent as a privileged one, there being no proof that he (the assignee) had obtained goods which might have been distrained sufficient to pay it; and such order was therefore set aside on appeal.

J. K. Kerr, for plaintiff.

O'Brien, for defendant.

POTTS V. LEASK AND RYERSE.

Co-contractors—Payment by one—26 Vict., c. 45.

An action having been brought and a judgment recovered against two defendants on a contract by them to carry certain lumber, the verdict and costs were paid by one defendant, who thereupon, without applying to the plaintiff or tendering him any indemnity, issued an execution in his name against the other defendant for one-half of the debt and costs.

Held, clearly not warranted by the 26 Vict., c. 45, and the execution was set aside.

J. B. Read for plaintiff.

A. Cassels for defendants.

MUNRO V. THE COMMERCIAL BUILDING AND INVESTMENT SOCIETY.

Mortgage—Insolvent Act of 1869, sec. 50—Right to distrain for mortgage money.

One M., in May, 1873, mortgaged land to defendants to secure payment of money by instalments, and it was provided that, in case of default, the defendants might distrain. M. made an assignment under the Insolvent Act of 1869, and the plaintiff, as his assignee, entered on the land, which was in M.'s possession, and took possession of certain goods there belonging to him. Afterwards, an instalment on the mortgage being overdue, the defendants distrained

therefor on these goods, which were still upon the mortgaged premises. *Held*, that the defendants' only remedy was by application under sec. 50 of the Insolvent Act, and that they had no right to distrain.

Ritchie for plaintiff.

Beatty, Q.C., for defendants.

VACATION AFTER HILARY TERM, 1876.

BANK OF HAMILTON V. WESTERN ASSURANCE COMPANY.

Insurable interest—Courts auxiliary.

[April 4.]

Declaration on a policy of insurance, whereby defendants agreed with one T. S. to insure him against loss by fire to the amount of \$1,500 on wheat &c., owned by the assured, and that the amount of loss, if any, should be paid by the defendants to the plaintiffs: averments, that the policy was delivered to plaintiffs, who thenceforward and at the time of the loss were interested in said wheat; that the wheat was lost; that all conditions were performed, &c., but defendants did not pay plaintiffs.

HARRISON, C.J., *held*, that the declaration showed an insurable interest both in T. S. and the plaintiffs.

Held, also, that the plaintiffs might properly sue at law, and that their claim was a pure money demand.

The spirit of legislation is to make courts of law and equity auxiliary to each other, and judges should, as far as in their power, consistently with rules of law, act in a similar spirit.

C. Robinson, Q.C., for plaintiffs.

Lockhart Gordon for defendants.

HARRIS V. SMITH.

Easements—"Appurtenant to."

[March 31.]

The owner in fee of two adjoining closes having leased one to B and the other to A,

HARRISON, C.J., *held* that a way, constructed across A's close for the use and enjoyment of B's shop, visible to all when A acquired title, and to which A's deed is made subject, passed by the words "appurtenant to" in the deed to B, which is prior to A's deed.

The law relating to easements discussed, and *Pyer v. Carter*, 1 H. & N., 916, commented on and approved of.

Ritchie for plaintiff.

Allan Cassels for defendant.