crease the risk to the vessel. Extraordinary expense was gone to for the purpose of saving both vessel and cargo, and most of the cargo was saved, but the vessel was a total loss.

*Held*, that the owners of the cargo were only liable to pay a reasonable amount for the cost of saving the coal, and that there was no claim for general average against the coal saved.

*Wallace Nesbitt* for appellants.

*Delamere*, Q.C., for respondents.

## HIGH COURT OF JUSTICE.

### *Chancery Division.*

Div'l Court.] [Dec. 23.

HESSON *v.* LLOYD.

*Revising officer — Prohibition to — Electoral Franchise Act — Jurisdiction of the High Court of Justice.*

There is no jurisdiction in the High Court of Justice to issue a writ of prohibition to a revising officer to compel him to abstain from performing any duty under the Electoral Franchise Act.

The legislation in regard to such matters does not trench upon, nor is the question one of "property and civil rights in the province."

Re *Simmons* and *Dalton*, 12 O.R., 505, not followed.

*W. R. Meredith*, Q.C., for the motion.

*Lash*, Q.C., *contra*.

Div'l Court.] [Jan. 22.

RE WATSON TRUSTS.

*Lease—Power to renew for further term—Extent of English Settled Estates Act of 1856, 19 & 20 Vict., c. 120—53 Vict., c. 114 (O.) — Construction of words "usual custom."*

In applying the English Settled Estates Act of 1856, 19 & 20 Vict., c. 120, to Canadian affairs, the words "usual custom" in s. 2 must be satisfied with something less than the immemorial custom of England. It is satisfied by proof of a well recognized method or usuage of framing building leases in a given locality.

*Held*, under that statute and 53 Vict., c. 114 (O.), that power to lease with extended right of renewal might be granted up to 999 years.

*D. E. Thomson*, Q.C., for the petitioner.

*J. Hoskin*, Q.C., for the infants and unborn issue.

Div'l Court.] [Jan. 27.

GAULT ET AL. *v.* MURRAY ET AL.

*Injunction—Dismissal of action at trial—Damages—Award of reference as to.*

The jurisdiction to award an enquiry as to damages, or to assess without a reference, when an injunction has been granted and an undertaking as to damages taken, is a discretionary one to be exercised judiciously and not capriciously. And as the trial judge was, on the evidence, of opinion that no damage was proved, occasioned by the injunction, as distinct from the detriment arising from the litigation, whereby the defendants' title to the property was impeached, and as no additional evidence was before the Divisional Court, it was

*Held* (affirming ROSE, J.), that under the circumstances of this case, no reference as to damages should be ordered, or damages awarded.

*Geo. Kerr, Jr.*, for the plaintiffs.

*E. D. Armour*, Q.C., for defendant McIntosh.

BOYD, C.] Jan. 25.

TILLIE *v.* SPRINGER.

*Trustees and Executors—Right of retainer—Devolution of Estates Act—Assignment for creditors—R.S.O., c. 124.*

Under their father's will, C. and W. were to receive a share of the proceeds of certain land to be sold on the death of the widow, who was still alive. They also owed the estate a certain debt which, by an extension in the will, was to be payable in five yearly instalments from the death of the testator—February 1888.

In December, 1890, C. and W. made an assignment for the benefit of their creditors.

*Held*, (1) that the effect of the assignment was by virtue of R.S.O., c. 124, s. 20, s-s. 4, to accelerate payment of the debt due from C. and W. to the estate; and

(2) That the executors, being also trustees of the land of which C. and W. were to receive shares when sold under the will, held security for their claim against C. and W., having (since the Devolution of Estates Act applied here) the right to retain C. and W.'s share under the will as against their debt to the estate. This security the executors and trustees should value pursuant to the Act respecting assignments for the benefit of creditors.

*Bain*, Q.C., for the plaintiff.

*Du Vernet* for the defendants.