son of dealings subsequent to the Winding-up order, but of dealings prior thereto, because the engagement was to give security to the satisfaction of the Government; and in taking up the deposit receipt and supplying better security he was only fulfilling that which he was obliged to do by a prior *bona fide* engagement.

Snelling, for the petitioner.

Foster, Q.C., for the liquidators.

Boyd, C.] [April 9.

KIRK *et al. v.* BURGESS *et al.*

Execution debtor—Lands on hand—Rents collected and applied to other purposes than payment of the plaintiff's judgment—Appointment of receiver to collect—Creditors' Relief Act, R. S. O. c. 65.

The defendant was a judgment debtor, and had no goods and chattels, but was the owner of several houses subject to mortgages, and his agent was collecting the rents and applying the surplus thereof, after payment of the annual charges on the houses, to the defendant's use for other purposes than the payment of the plaintiff's judgment. In an application by the plaintiff for the appointment of a receiver to collect the rents, it was

Held, that a receiver should be appointed, but as the land was encumbered, such appointment should be without prejudice to the rights of the mortgagees, and following in *re Pope* 17 Q. B. D. 749, that although the ordinary remedies by way of execution are open, the court has power to award equitable execution in any and every case, when it is just or convenient so to do; and if the court sees that any good end will be served by appointing a receiver, it will so order.

Held also, that as the judgment debtor had appointed an agent who was collecting the rents and paying certain creditors, it was more equitable to have a receiver as an officer of the court collect and apply them for the benefit of the plaintiffs and other creditors entitled under the Creditors' Relief Act, R. S. O. c. 65.

H. Cassels, for the petitioner.

Tilt, Q.C., contra.

Boyd, C.] [May 9.

Re CROSKERY.

Dower — Bar in mortgage — Equity of redemption—Surplus after sale.

The owner of land in fee mortgaged it to a Building Society in fee. After this, he assigned his equity of redemption to the sheriff of the county of Huron, together with all his estate, for the benefit of his creditors. After the assignment, the mortgagees sold under the power of sale, and after payment off of their claim a surplus of $387.48 was left, which they sought to pay into court under the Trustees' Relief Act.

Held, on appeal from the Master in Chambers, that the claim of the wife of the mortgagor in respect to dower was of such a character that the mortgagees ought not to be put to the risk of determining whether it was, or was not, well founded, and were, therefore, entitled to pay the money into court.

Smart v. *Sorrenson*, 9 O. R. 640, and *Calvert* v. *Black*, 9 P. R. 255, commented on.

Wm. Douglas, for the mortgagees.

Hoyles, for the assignee for the benefit of creditors.

Practice.

C. P. Divisional Court.] [May 26.

In re MCLEOD *v.* EMIGH.

Costs—Motion for Prohibition.

By R. S. O. (1887), c. 52, s. 2, a successful party on an application for a writ of prohibition, is entitled to costs, and should be awarded costs, unless the court in the proper exercise of a wise discretion can see good cause for depriving such party of costs; and such party should not be deprived of costs unless there appear impropriety of conduct which induced the litigation, or impropriety in the conduct of the litigation. Under the circumstances of this case, reported 12, P. R. 450; the defendant was allowed costs of a successful motion for prohibition to a Division Court.

Aylesworth, for the motion.

A. M. Grier, contra.