

same want of jurisdiction to order payment of costs which existed when *In re Dodds* was decided, does not now exist, for, by s. 119 of the Judicature Act, the costs of all proceedings in the Supreme Court of Judicature are in the discretion of the court or judge; and this provision has been held to extend to proceedings by habeas corpus: *Regina v. Jones*, [1894] 2 Q.B. 382. But, even when the *Dodds'* case was decided, the court or a judge had power to impose the term of payment of costs, as the price of an indulgence granted: *Regina v. Hart*, 45 U.C.R. 1.

Per OSLER, J.A.: The application for the writ being a proceeding in the High Court branch of the Supreme Court of Judicature, there was jurisdiction to dispose of the costs under s. 119 of the Judicature Act, and an order made thereunder, in the exercise of discretion, is not appealable. The Court may, as in the *Dodds'* case, make an order for payment of expenses as a condition precedent, but this has not been the practice here. The question of costs should have been raised and determined below; it is not a question to be tried on affidavits by this court. The granting of leave being a matter of discretion, it would not be reasonable to grant it here, as the question is one of costs, upon the payment of which the case can be heard on the merits. Motion refused with costs.

J. W. McCullough, for applicant. *Heyd*, K.C., for respondent.

HIGH COURT OF JUSTICE.

Armour, C.J., Falconbridge, J., Street, J.]

[Dec. 21, 1899.

CHRISTIN *v.* CHRISTIN.

*Chattel mortgage—Renewal—Statement—Affidavit—Payments—
Principal—Interest.*

An appeal by the execution creditor from an order of the Judge presiding in the 1st Division Court in the County of Carleton dismissing a motion by the appellant to set aside the verdict in favour of the claimant in interpleader, and for a new trial.

The goods seized by the execution creditor were claimed under a chattel mortgage for \$5,000 made to the claimant by the execution debtor, June 27, 1896, and since annually renewed.

The objection taken by the execution creditor to the validity of the instrument was that the renewals were not sufficient, in that (1) they were not signed by the mortgagee, and (2) were not upon their face sufficiently explicit in regard to payments made.

On the back of each statement was an affidavit, signed by the mortgagee and sworn by him, referring to the statement upon which it was indorsed.