

Proceedings were taken in the year 1882 for the administration of the estate and without, as was held in the previous judgment of this Court, 27 A.R. 242, proper proceedings being taken it was assumed that there were no children of the niece and the amount of their legacy and their share in the residue was divided between the charitable institution, the trustees and one of the other legatees:

Held, that the trustees and the charitable institution were bound to repay the excess which they had received—per Curiam, with interest from the date of proceedings taken by the children of the niece; and, per MACLENNAN, J.A., dissenting, with interest from the date of distribution under the report in the administration proceedings.

Judgment of MOSS, J.A., reversed.

D'Arcy Tate, for appellants. *Teetzel*, K.C., and *A. M. Lewis*, for Boys' Home. *Shepley*, K.C., and *William Bell*, for Lewis and Morgan. *F. W. Harcourt*, for infant.

HIGH COURT OF JUSTICE.

Boyd C.]

McMAHON v. COYLE.

[March 24.

Short form lease—Breach of covenant.

The right of re-entry under the Short Form lease applies to the breach of a negative as well as of an affirmative covenant, so that there is a right of re-entry for breach of the covenant not to assign or sublet without leave. *Toronto General Hospital v. Denham* (1880) 31 C.P. 207 followed.

The making of an agreement for the assignment of a lease, the settlement of the terms thereof and the taking of possession by the assignee constitute sufficient evidence of the breach of such covenant, so that the fact of the document showing the transfer not having been made until after action brought was immaterial.

Porter, for plaintiff. *Clute*, K.C., and *Morden*, for defendants.

Winchester, M.C.]

O'FLYNN v. MIDDLETON.

[March 31.

Costs—Lien of solicitor—Lands subject of action—Registry of lis pendens—Discharge of.

Consol. Rule 1129, which empowers a court or a judge to declare that a solicitor, who has been employed to prosecute or defend any case, etc., shall have a lien on the property recovered or preserved through his instrumentality is construed liberally, so as not to deprive the solicitor of his lien.

A lis pendens registered by a solicitor against land, the subject matter of a redemption action, wherein costs were incurred by the solicitor will not be discharged on a motion therefor in Chambers, but will be left for the decision for the trial judge after the hearing of the evidence.

Du Vernet, K.C., for plaintiff. *Moss*, for defendant.