

Com. Pleas Div.]

NOTES OF CANADIAN CASES.

[Com. Pleas Div.

occasioned the owner an outlay beyond the balance of the original contract price, and at the same time the payments to the contractor, or for the work actually performed have been 90 per cent. or under of the value of such work, then in every such case the claim of any lien-holder (other than the claims for wages, which I do not deal with) must be postponed till the owner's damage is satisfied, and if such damage absorbs all amounts due the original contractor under his contract for the work performed by him, then such lien will not attach.

Plaintiff's action dismissed with costs, and lien ordered to be discharged.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE
LAW SOCIETY.

COMMON PLEAS DIVISION.

Wilson, C. J.]

PETERBOROUGH REAL ESTATE INVEST-
MENT CO. V. PATTERSON.

*Will—Estate by entireties—Estate tail—
Mortgage.*

Testatrix, by her will, devised to her "children A. P. and to M. P., wife of A. P., and to their children and children's children forever," the east half of lot 15 in the 8th concession of Asphodel; "Provided always, that the aforesaid A. P. and M. P. shall not be at liberty at any time or for any purpose to convey or dispose of the said lands, as it is my will that the same be entailed for the benefit of their children." The testatrix then devised all the rest and residue of her estate to M. P., wife of A. P., to have and to hold the same to her and her heirs, executors, administrators and assigns, to her and their use and behoof forever. M. P. and A. P. mortgaged the said lot 15 to the plaintiffs, purporting thereby to grant the said lands in fee simple.

Held, taking the whole will together, that A. P. and M. P. took an estate for life by entireties, and their children in fee tail in severalty.

Held, also, that the said will did not contain such a restraint on alienation as to render the mortgage void, but it was a valid charge for the lives of the said M. P. and A. P., and for the life of the survivor of them.

Pousette, Q.C., for the plaintiffs.

J. K. Kerr, Q.C., for the infant defendants.

Clute and Wallace Nesbitt, for the other parties.

HOWELL V. LISTOWEL RINK CO.

Distress—Sale—Illegality—Notice—Appraisal—More goods sold than necessary—Tender—Landlord purchasing at sale—Abandonment—Misdirection.

In an action for illegal distress and sale of goods distrained, no notice of legal appraisal of the goods distrained before sale was proved. It was proved that the actual value of the goods sold was greater than the amount due for rent—that the goods were sold for less than their value—and that the plaintiff proved a tender before sale to the bailiff. The damages found for the plaintiff were \$475.

Held, that the plaintiff was entitled to recover, and that the damages would be not merely the difference between the rent and the value of the goods, but the whole damage sustained by him, by being deprived of his goods, and that the evidence of the actual loss sustained by the plaintiff justified the finding.

It was urged that plaintiff had abandoned the premises; but the evidence failed to substantiate this.

H. was the president of the defendants, an incorporated company, and also a member of a gas company, also incorporated, and at the bailiff's sale purchased the goods for the gas company.

The learned Judge at the trial directed the jury that H. was, in reality, both seller and buyer, and therefore the sale was void.

Held, that there was misdirection, but as it appeared that no substantial wrong or miscarriage was occasioned thereby, the court would not interfere.

Falconbridge, Q.C., for the plaintiff.

Shepley for the defendant.