

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Dom. Elec. Cases.]

perhaps when the costs of the client are ordered to be paid by a third party. If defendant cannot be held to bail for this claim then solicitors are worse off than any other class; but such is not the case—sec. 42 cap 140 R. S. Ont. shews this. There do not appear to be any decided cases upon the point, probably because no client ever attempted to treat his solicitor so unfairly.

DAVIS, JUNIOR JUDGE.—I am of opinion that the plaintiff's claim is not for costs within the meaning of the statute and that defendant was properly arrested. The application is therefore dismissed.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT OF CANADA.

TRUST AND LOAN CO. V. LAWRASON ET AL.

Mortgage—Distress clause—Tenancy at will.

A mortgage made in pursuance of the Short Forms of Mortgages Act contained the following:—"And the mortgagor doth release to the Company all his claim upon the said lands, and doth attorn to and become tenant at will to the mortgagees, subject to the said proviso." It also provided that the mortgagees, on default of payment for two months, might, on one month's notice, enter on and lease or sell the lands; that they might distrain for arrears of interest, and that until default of payment the mortgagors should have quiet possession.

The sheriff, under an execution at the suit of respondents against the mortgagors, who had been in possession from and at the time of the execution of the mortgage, seized the goods of the mortgagor on the lands mortgaged. Before sale and removal of the goods, but after seizure, the mortgagees (the appellants) claiming as landlords of the mortgagor, claimed one year's rent.

Held, (per STRONG, FOURNIER and HENRY, J.J., affirming the judgment of the Court of Appeal: 6 Ont. App. R. 286), that there was no rent fixed for which there was power to distrain, and the appellants could not claim a landlord's right, as against an execution creditor, of a year's arrears of interest on their mortgage before removal by the sheriff.

(Per Sir WM. RITCHIE, C. J., TASCHEREAU

and GWYNNE, J.J.) that a tenancy-at-will was created by the mortgage at a fixed rent, viz., the amount of the interest payable at fixed times, and that under such demise the interest, on default in payment of it, became payable *qua* rent, and liable to be distrained for as rent; the right to distrain not being a mere collateral license but a right of distress incident to a tenancy.

The Court being equally divided, the appeal was dismissed without costs.

Marsh, for appellants.

Kerr, Q.C., and *Wilkes*, for respondents.

ELECTION CASES.—QUEEN'S BENCH DIVISION.

Cameron, J.]

[Oct. 20.]

IN RE RUSSELL ELECTION.

Dominion Election—Entitling petition—Deposit in Q. B.—Security.

The O. J. Act has not superseded the Q. B. as a Court for the trial of Dominion Controverted Elections.

Here petition was "In the Q. B., H. C. J., Q. B. D.," and deposited with a clerk in the Q. B. D., with whom and in which the Q. B. business was formerly transacted, and the clerk entered it in the procedure book of the Q. B. D.

Held, that the words "H. C. J., Q. B. D." in the entitling of the petition might be rejected as superfluous, and the petition was properly presented in the Q. B., and that the entry in a wrong book ought not to prejudice the petition.

Bethune, Q.C., for petitioner.

McCarthy, Q.C., and *Creelman*, contra.

IN RE WEST HURON ELECTION.

Controverted election (D.)—Preliminary objections—Agency—Interference of Ont. Gov.—Votes struck off when seat not claimed.

The H. C. J. has no jurisdiction in Dominion Controverted Elections.

On an allegation that Ontario Government, in behalf of respondent, used undue influence, an objection that no agency was stated, and because no such agency, if stated, could in law exist, was *held* proper to be left for disposition by Judge at trial. Also, that a petition need not state the grounds which void an election in order to be