

C. of A.]

DISTRESS CLAUSES IN MORTGAGES—NOTES OF CASES.

[C. of A.]

as to the extreme terminus to vitiate the demise, as may be exemplified by the case of a demise to A for ninety-nine years, if he so long live, which is a valid demise.

The following is suggested (subject to remarks above made as to it) as an appropriate clause to create the position of landlord and tenant at a rent as rent service:—

"And the mortgagee leases to the mortgagor said lands until the said day of one thousand eight hundred and (or from year to year) undisturbed by the mortgagee or anyone claiming through or under him, he, the mortgagor, his executors, administrators or assigns, paying therefor in every year during the said term, on each and every of, and on the same days, as in the above proviso for redemption appointed for payment of interest, such rent or sum as equals in amount the amount of interest payable on such days respectively, according to said proviso, without any deduction.

And it is agreed that such payments, when made as aforesaid, shall respectively be taken and be in all respects in satisfaction and payment of the said interest then payable; provided always, and it is agreed, that in case any one or more of the covenants or agreements herein of the mortgagor be untrue or be unobserved or broken at any time, the mortgagee, his heirs or assigns, may enter on the said lands or any part thereof, in the name of the whole, without any prior demand or notice, and take and retain possession thereof, and determine the said lease."

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED
IN ADVANCE, BY ORDER OF THE
LAW SOCIETY.

COURT OF APPEAL.

From C. C., Lincoln.]

[Sept. 27.]

IN RE HARPER WILSON, AN INSOLVENT.

Insolvent Act 1875, sec. 84—Double proof.

H. W. carried on business separately, and as a member of the firm of W. & S. The joint

and several notes of W. & S. and H. W. were given to secure debts due by the firm—and shortly afterwards both W. S. and H. W. made assignments in insolvency,

Held (Moss, J. A.), reversing the decision of the County Court, that under section 84 of the Insolvent Act of 1875, the holder of these notes was entitled to prove against the partnership estate for his claim, less the amount at which he valued the separate liability of H. W., and the partnership creditors not having assumed this liability, against the estate of H. W. for the full amount of the debt.

The rule against double proof in such cases was impliedly repealed by the 60th sec. of the Insolvent Act of 1869, which contained the same provisions as the 84th section of the Insolvent Act of 1875.

Re Dodge v. Budd, 8 C. L. J. N. S., 50, commented on, and disapproved of.

Appeal allowed

From Q. B.]

[Dec. 17.]

O'CONNOR v. DUNN.

Evidence—Field Notes of deceased Surveyor—Admissibility of.

In order to prove the boundary between lots 3 and 4, notes of a survey made by a deceased surveyor, and entered in a book in which he kept a diary of matters private and professional, were tendered in evidence. The first entry which it was desired to read was as follows:—"6th June, 1877. Got Mr. A. to show me the stake between Nos. 2 and 4," &c. In another part of the book the following entry appeared:

D. Boulton, Esq., £2 16 3

At D. Boulton's 4

3 0 3 pd.

There was no evidence that at or about the time of the first entry Boulton had any interest in either lot 3 or 4, but it was sought to connect the two entries by proving that Boulton acquired title to lot 2 on the 23rd August, 1827, and to lot 3 on the 28th January. Surveyors were not under any obligation at that time to make notes of surveys, and it was not proved that the entry was made contemporaneously with the transaction.

Held, (Hagarty, C. J. C. P. Moss, C. J. A.