

Chan. Div.]

NOTES OF CANADIAN CASES.

[Com. Pleas—Prac

Boyd, C.]

[November 11.]

STIMSON V. BLOCK.

Conversion—Measure of damages.

In this action the plaintiff complained that the defendant wrongfully detained and converted certain goods of his by refusing to allow the same to be removed, pursuant to the plaintiff's demand, on December 23rd.

It appeared that when the plaintiff sent for the goods on December 23rd he was allowed by the defendant to remove a considerable portion of them, but that the defendant refused to allow him to remove any of the bulkier goods until after Christmas, deeming that this would interfere with his own trade. On December 26th the defendant notified him that he could remove the balance of his goods. The plaintiff thereupon sent for the goods, but found a bailiff in possession under process issued by certain attaching creditors.

The plaintiff contended that he was entitled to recover the value of the goods plus expenses.

Held, affirming the judgment of the Master in Ordinary, that the plaintiff was only entitled to nominal damages plus the expenses actually incurred by him in consequence of the detention of his goods. For by acting on the letter of December 26th he condoned the previous wrong of the defendant, and thus there did not appear to have been any disposal of the goods in the sense of their destruction or removal adverse to the plaintiff's property, but the plaintiff was ultimately prevented from getting the goods, not because of the defendant's misconduct, but because the claim of attaching creditors intervened.

The old learning on the subject of "conversion" need not be imported into the system introduced by the Judicature Act, which provides for redress in case the plaintiff's goods are wrongfully detained, or in case he is wrongfully deprived of them. In all such cases the real question is whether there has been such an unauthorized dealing with the plaintiff's property as has caused him damage, and if so, to what extent has he sustained damage.

Read, Q.C., and *W. Read*, for plaintiff.
Watson, for defendant.

COMMON PLEAS.

GRAHAM V. LANG.

Landlord and tenant—Forfeiture of term and rent due on assignment—Distress.

The defendant made a lease under seal to R., dated 8th November, 1884, for five years from 12th November, at the rent of \$400, payable half-yearly in advance on the 12th November and May in each year. The lease contained a covenant that "if the lessee shall make any assignment for the benefit of creditors . . . the said term shall immediately become forfeited and void, and the full amount of the current yearly rent shall be at once due and payable." R. paid the first half-year's rent. On the 5th May, 1885, R. made an assignment for the benefit of creditors; and on the 8th May the defendant, claiming to do so under the terms of the above covenant, distrained for the half-year's rent, which, in the regular course of time, would have been payable in advance on the 12th May.

Held, that the distress was valid.

PRACTICE.

Ferguson, J.]

[Sept. 21.]

BARBER V. BARBER.

Purchaser—Compensation—Vesting order—Advertisement.

The advertisement of a judicial sale stated that the property was in possession of a tenant who would give the purchaser possession on the 1st of November. The purchaser, however, was prevented by the tenant from taking possession till the month of January following. About the middle of November the purchaser obtained a vesting order.

Held, that the purchaser was entitled to compensation from the vendor for being kept out of possession, and that he had not waived his right by taking a vesting order. The failure to give possession was a breach of representation in the advertisement, a representa-