quently dealing with the mortgage; and an injunction to restrain the mortgagees from parting with the mortgage, or assigning their interest therein, is unnecessary. An interim injunction obtained in such a case was dissolved with costs.

Masten, for plaintiff. *Elliot*, for defendants.

Meredith, C.J., Rose, J., MacMahon, J.] [Oct. 31.

INCORPORATED SYNOD OF TORONTO *v.* FISKEN.

Landlord and tenant—Action for rent and possession—Parties—Judgment for possession against tenant binds sub-tenant.

In an action by a landlord for overdue rent and possession of the premises under a clause for re-entry contained in the lease, it is not necessary to make sub-tenants parties defendant, and a judgment may be given against the tenant for possession under which the sub-tenant must go out. Judgment of ARMOUR, C.J., reversed.

Aylesworth, Q.C., for plaintiffs.

MacMahon, J.] SHERWOOD *v.* BALCH. [Nov. 10.

Arbitration and award—Motion to stay proceedings—R.S.O. c. 62.

Motion for an order staying proceedings in an action under section 6 of Arbitration Act, R.S.O., c. 62. The action was to recover a balance claimed to be due under a contract for construction of a railway. The contract contained a clause that in case of any disputes or differences as to the meaning of the agreement, price to be paid, etc., such dispute should be referred to the engineer, whose decision should be final, and to whose arbitration the parties to the contract agreed to submit any such dispute. It appeared that a question in dispute had arisen as to whether, in the event of earthwork being measured in embankment instead of excavation, an increase of a certain percentage according to the soil, over and above the embankment figures, should be allowed. The plaintiffs contended that there was a well known custom or usage of this country to this effect established in connection with railroad contracts, while the defendants refused to recognize any such usage. There was evidence that the engineer had publicly and privately expressed himself that no such usage existed. This the engineer did not deny, but stated that he was not satisfied that there was any such usage, but that he did not mean that he would not give the plaintiff's contention fair and impartial consideration should the matter come before him as arbitrator.

Held, that on this state of facts, the proceedings in the action should be stayed. *Jackson* v. *Barry Railway Company* (1892) 1 Ch. 138 238, specially referred to.

Saunders, for motion. *Code*, contra.

Boyd, C., Ferguson, J., Meredith, J.] IN RE EASTMAN. [Nov. 17.

Appeal to Divisional Court from Surrogate Court—Notice—Affidavit—Security.

A motion by the executors of the will of Chester M. Eastman to quash an appeal by certain of the beneficiaries under the will, from an order made on