

Co. Ct.]

COLLINS V. BALLARD—RECENT ENGLISH PRACTICE CASES.

Section 15 gives the right to the person furnishing the food to recover the value thereof from the owner of the animal.

Section 16 enables him to recover it in a summary manner before a Justice of the Peace, and directs the Justice in estimating the value or amount to adhere as "far as applicable to the tariff of poundkeepers' fees and charges established by the by-laws of the municipality."

Sections 17 and 18 authorize the person entitled to recover these charges instead of proceeding before a justice to bring about a public sale of the animal.

Now, where an animal has been retained by the individual upon whose premises it has trespassed instead of being sent to the public pound, I think it is intended by the statute that if his impounding has been legal, and he has observed otherwise the statutory provisions, that such person should be entitled to detain the animal until his proper charges are paid. Replevin will, in my opinion, only lie:

1st. Where there has been an improper or unlawful impounding, and hence no right created in favour of the person impounding to make a charge.

2nd. Where there has been an extortionate claim made, and there has been a *tender* of a reasonable and proper amount, and

3rd. Where there has been some improper dealing with the animal impounded, by the person impounding, such as using or working the animal, which act or acts would render it inequitable or unjust on his part to make any claim for care or keep.

In any other cases than these I think the intention of the Act is that the person impounding should only be compelled to give up the animal upon receiving payment of his reasonable charges.

In the present case I think the charges made were reasonable. They were estimated upon the basis of the township tariff for poundkeepers. I think it was amply proved that the animal was well cared for.

It is admitted that no tender of any sum whatever was made before action under the writ issued herein.

I think also that the defendant has substantially observed all the provisions of the statute, which were precedent, to his right to claim for the expenses he was put to in maintaining and caring for the animal.

Under these circumstances I shall enter a verdict for the defendant with full costs of suit, but upon payment by the plaintiff to the defendant of the latter's claim, \$23, for the keep of the animal, and also upon payment of the defendant's costs of this

suit within one month from date, I will allow the plaintiff to enter a judgment in his own favour for twenty cents without costs. I allow this option to prevent further litigation between the parties hereto, upon the replevin bond or otherwise.

RECENT ENGLISH PRACTICE CASES.

IN RE SPEIGHT, EX PARTE BROOKS.

Appeal—Preliminary objection—Costs.

[L. R. 13 Q. B. D. 42.]

This was an appeal from an order by a County Court Judge making absolute an order *nisi* for an injunction. The respondent took a preliminary objection, which was sustained.

CAVE, J.—The party intending to take a preliminary objection, which may be fatal, should give notice to the other side of his intention at the earliest possible moment. Then if the party having received such a notice chooses to go on with his appeal, he knows he does so at the peril of having to pay the costs if he fails. But when such an objection is taken at the very last and succeeds, I think the costs ought not to be allowed.

HOWELL V. DAWSON.

Imp. Jud. Act, 1873, sec. 25, sub-sec. 8—Ont. Jud. Act, sec. 17, sub-sec. 8—Interpleader issue—Appointment of Receiver.

[L. R. 13 Q. B. D. 67.]

An interpleader issue being ordered to try the right to goods seized in execution, the court or a judge may order that instead of a sale by the sheriff, a receiver and manager of the property be appointed, as in this case where the goods seized were cabs and horses, used in the business of a cab propriety, which was a going concern.

HARVEY V. CROYDON UNION RURAL SANITARY AUTHORITY.

Consent order—Withdrawal of consent.

Held, by Court of Appeal, when counsel by the authority of their clients consent to an order, the clients cannot arbitrarily withdraw such consent, though they may apply to be relieved from their consent, on the ground of mistake, or surprise or for other sufficient reason.

[L. R. 26 Ch. D. 249.]

COTTON, L. J.—If a consent is given through error or mistake, there can be no doubt that the court will allow it to be withdrawn if the order has not been drawn up. But the question is very dif-