

Practice.

Ferguson, J.]

[June 19.]

SMITH v. FLEMING.

Costs—Covenant for renewal lease, construction of—Costs of lease—Costs of reference and award.

It was provided in a lease that if the lessee should desire a renewal for a further term, and should give a defined notice, containing the name of an arbitrator, the lessors should and would, *at the expense of the lessee*, execute a new lease at such increased yearly rent as might be determined by the award of three indifferent arbitrators, or a majority of them.

Held, that the costs of the lease were provided for both by law and by the above clause, and must be borne by the lessee, but that the costs of the arbitration were not provided for by the clause, and each party must bear his own costs of the reference and half the costs of the arbitrators' fees, for which the action was brought.

A. C. Galt, for the plaintiffs.

S. H. Blake, Q.C., and *Tilt*, Q.C., for the defendant Fleming.

Arnoldi, for the defendant, the Rector and Churchwardens of St. James's Church, Toronto.

Falconbridge, J.]

[July 11.]

In re SOULES v. LITTLE.

Prohibition—Division Court—Defendant out of jurisdiction—Taking chances at trial—Delay in moving.

T., one of the defendants in a Division Court action, resided out of Ontario, and process was served substitutionally upon him. L., the other defendant, objected that the court had no jurisdiction by reason of T.'s absence from the Province. No written notice of this objection was given before the trial, and there was a conflict of evidence as to whether it was taken at the trial; but at any rate, if taken at all, it was practically abandoned, and the defence rested on a different ground. The trial was on the 13th January, 1888, when judgment went for the plaintiff for more than \$100; a new trial was moved for by L., and was refused on the 23rd February, 1888; execution then issued, under which goods of L. were seized, and became the sub-

ject of an interpleader. L. did not appeal, but on the 16th May, 1888, moved for prohibition.

Held, that L. having taken his chances at the trial, and not having sufficiently accounted for his delay in moving, the discretion of the court should not now be exercised in his favor.

W. T. Allan, for the motion.

C. J. Holman, contra.

ELECTION COURTS.

Street, J.]

[January 31.]

EAST ELGIN ELECTION (DOMINION).

MERRITT v. WILSON.

Dominion Controverted Elections' Act—Inducing a voter to vote—Loan to voter—R. S. C. c. 8, s. 84 (a) 88, 91.

Where it was charged that an agent of the defendant paid, or offered to pay, money to a voter for travelling expenses and loss of time, and the evidence showed that prior to the election the said voter, on being asked by the agent if he intended to vote at the election, had answered that he did not think of doing so, as he could not spare the money to go; but that if he did go he would vote for the respondent, and the agent then gave him the cost of a return ticket, which he afterwards, without any demand being made for it, repaid; that the agent had previously lent the said voter sums of money, which had been repaid; that this transaction was, from the beginning, understood between the parties as a loan, and not as a gift; and that the loan was not made with the intention of influencing the voter's vote, or inducing him to vote for the respondent.

Held, that the transaction was not "bribery," or an unlawful act, or corrupt practice within R. S. C. c. 8, s. 84 (a), s. 88, or s. 91.

If the position taken by a voter is equivalent to that which would be expressed by his saying to the candidate or his agent, "I will not vote unless you lend me a sum of money," and the money is thereupon lent to him, then the lending of the money would be to wilfully induce the voter to vote within the meaning of R. S. C. c. 8, s. 84 (a). But if the position of the voter is equivalent to that which would be expressed by his saying "I am willing to vote, but cannot do so, because I have not the