

Held, that the rent must be deemed to have been received by the executor for the use of those entitled to it, and was therefore apportionable between the executor and the remaindermen.

Where the rent had been paid over by the executor to those entitled under the life tenant's will, the executor was held entitled to an order for repayment.

St. John, for the plaintiff.

McCulloch, for the defendant.

D. C. Ross and *J. Nason*, for the third party defendants.

Feb. 20.

DIVISIONAL COURT.]

THIBADEAU *v.* GARLAND.

Insolvency—Purchase of debt after knowledge of insolvency—Right of set off.

After a trader had become insolvent and had absconded, but before he had made an assignment for benefit of creditors, a person indebted to the insolvent and aware of his insolvency, purchased from a creditor of the insolvent a debt due to the creditor by the insolvent, which he claimed to be entitled to set off against his debt to the insolvent,

Held, under R.S.O., c. 224, sec. 23, in connection with the general law of set off, he might properly do so.

McCarthy, Q.C., for the plaintiff.

Ritchie, Q.C., and *Masten*, for the defendant.

[Feb. 20.

DIVISIONAL COURT.]

BROWN *v.* CARPENTER.

Appeal—Divisional Court—Discovery of new evidence—Motion for new trial—Judgment of County Judge—Right of appeal—Law Courts Act, 1895, sec. 44, s.s. 3.

Under sec. 44, sub-sec. 3 of the Law Courts Act, 1895, 58 Vict. c. 13 (O.), a motion for a new trial on the ground of discovery of new evidence must be made before the County Court, and, there being no provision giving any right of appeal, the judgment of the County Court Judge is final and absolute; and this applies to a judgment given before the coming into effect of the said Act.

Quære, per FERGUSON, J., whether, where judgment was delivered and proceedings in appeal had been commenced before the coming into force of the Law Courts Act, it can be proceeded with.

Shepley, Q.C., and *J. E. Farewell*, Q.C., for the plaintiff.

McGillivray, for the defendant.

[Feb. 26.

BOYD, C., STREET, J. }
MEREDITH, J. }

HENRY *v.* DICKEY.

Consideration for mortgage—Given by prisoner for value of stolen goods—Validity of—Promise to prisoner.

The defendant, a prisoner on the charge of larceny, sent for the agent of the owner and offered to give security by a mortgage on his property for the value of the goods stolen. The agent told him he would have to take his trial just the same, whether he gave a mortgage or not, and he could not release