MYERS *v.* HAMILTON PROVIDENT AND LOAN COMPANY.

Judgment—Subsequent order to take accounts—Rules 551, 782.

After judgment had been pronounced, in an action therefor, declaring the estate the plaintiff took in certain lands under his father's will, and which he had mortgaged to the defendants, and refusing to restrain the sale thereof under the mortgage the sale was proceeded with and the lands sold. Subsequently, on the plaintiff's application, a judge's order was obtained directing a reference to the clerk in chambers to take the mortgage accounts, and to the taxing officer to tax defendants' costs; and, while this application was pending, the defendants obtained an *ex parte* order to pay the surplus proceeds of the sale into court.

Held, that, without deciding whether, in an application under Rule 782, a petition was necessary, the order to take the accounts, etc., was properly made under Rule 551.

W. H. Blake for the plaintiff.

Hoyles, Q.C., for the defendant.

LAWSON *v.* MCGEOCH.

Bankruptcy and insolvency—Intent to prefer—Presumption—R.S.O., c. 124, 54 Vict., c. 20 (O.)—Chattel mortgage—Prior agreement therefor—Effect of.

The 54 Vict., c. 20 (O.), amending R.S.O., c. 124, enacts that as to transactions coming within the amending Act, if impeached within the limited period, the intent to prefer is presumed, whether the act was done voluntarily or under pressure.

Held, that the proper construction is not that the presumption raised of an intent to prefer is an irrebuttable one, but that the onus of establishing that no such intent existed is cast on the person supporting the transaction.

A chattel mortgage was given in pursuance of a previous agreement therefor, a present advance being then made under the *bonâ fide* belief that it would enable the debtor to pay all his outstanding debts, and that he was solvent, a belief still entertained by the mortgagee when the mortgage was actually given.

Held, that the mortgage was valid.

Kapelle for the plaintiff.

Shilton for the defendant.

KENNIN *v.* MACDONALD.

Solicitor and client—Lien for costs—Taking note and leaving country—Waiver of lien—Replevin—Damages—Form of replevin bond.

The plaintiff, a solicitor, claiming on defendant's papers a lien for costs, settled with him at $225, taking a note therefor payable on demand. He then went to the United States, leaving the note and papers with another solicitor as his agent. The defendant, stating that he required the papers, or some of them, for use in his business, brought replevin proceedings in the Division Court, giving a bond to prosecute the suit with effect and without delay, or to return the property replevined and to pay the damages sustained by the issuing of the writ. There was a breach of the bond in not prosecuting the suit with effect. Under the replevin the defendant only procured some of the papers, which were tendered back to the plaintiff and refused, the defendant stating that they were of no value, the agent having retained the valuable ones. In an action by plaintiff to recover the damages he had sustained by the replevin,

Held, per BOYD, C., that even if any lien existed, which was questionable, by reason of the taking of the note and departure from the country, it was not displaced by the replevin suit; but, in any event, the plaintiff had failed to prove any actual damage, and though there might be judgment for nominal damages and costs there would be a set-off of the defendant's costs of trial, and therefore the better course was to dismiss the action without costs.

Quære as to the amount of damages recoverable.

The fact of the conditions of the bond being in the alternative instead of the conjunctive remarked on.

On appeal to the Divisional Court, the judgment was affirmed.

H. J. Scott, Q.C., for the plaintiff.

Defendant Macdonald in person.

Wallbridge for the defendants, the Johnstons.
