HIGH COURT OF JUSTICE.

Meredith, C.J., MacMahon, J., Lount, J.] [May 9.

DONAHUE *v.* CAMPBELL.

Action for wrongful distress for taxes—Assessment—Taxes—Distress—Personal property.

Held, that under s. 135*a* (1) 3, added to the Assessment Act, R.S.O. c. 224, by 62 Vict., (2) c. 27, s. 11, O., goods which are not in the possession of the person assessed in respect to them, cannot be distrained for the taxes against them. In this case the goods which had been mortgaged were, when seized, in possession of the bailiff of the mortgagee, who had taken possession on default in the mortgage.

Held, also, that the plaintiff, being a bailiff in possession, had a right to bring the action.

J. Montgomery, for plaintiff. *D. B. Doherty*, for defendant.

Boyd, C.] FISHER *v.* BRADSHAW. [May 13.

Chattel mortgage—Agreement for—Affidavit of execution—Validity.

Interpleader issue. Where an agreement to give a chattel mortgage is registered in the proper office under R.S.O. c. 148, s. 11, that Act does not operate to merge it in the subsequently executed and registered mortgage. The two may well stand together in an honest transaction for the purpose of mutual support. When the latter instrument is grafted, so to speak, on the former and refers to and recites the agreement therein contained, the whole contract in its inception and completion may be regarded as one transaction and may be read as one instrument.

W. A. J. Bell, for plaintiff. *Gibbons*, K.C., and *Stephens*, for defendant.

Falconbridge, C. J.] LAWRY *v.* TUCKETT-LAWRY. [May 28.

Practice—Frivolous action—Cons. Rules 259-261.

Held, that as *Lellis* v. *Lambert* (1897) 24 A.R. 653, leaves nothing to be said in support of the plaintiff's right to maintain this action, the statement of claim must be struck out on the ground that it discloses no reasonable cause of action, and the action dismissed with costs.

E. Martin, K.C., for defendant. *Teetzel*, K.C., and *G. C. Thompson*, for plaintiff.