

Ferguson, J.]

[Nov. 28.]

Re MARA.

Vendors' and Purchasers' Act—R. S. O. (1887), c. 112—Memorial of assignment of mortgage endorsed on mortgage—Discharge by assignee—Recital of assignment.

In an application under the Vendors' and Purchasers' Act, R. S. O. (1887), c. 112, in which a registered memorial of a deed poll or endorsement made on the back of a mortgage (describing the mortgage) *habendum*, "to have and to hold the said mortgaged premises unto (assignee) his heirs and assigns, etc., subject to the provisos and conditions in said mortgage, which said deed poll or endorsement by way of assignment is witnessed, etc., was offered as evidence of the assignment.

Held, sufficient.

A discharge of mortgage executed by an assignee contained these words: "And that such mortgage has been assigned to me," instead of giving the particulars of the dates of and parties to the assignment, was also

Held, sufficient.

Frank Denton, for the vendor.

Coatsworth, for the purchaser.

Boyd, C.]

[Nov. 28.]

KLINCK v. THE ONTARIO INDUSTRIAL
LOAN AND INVESTMENT CO. *et al.*

Mortgage—Power to distrain—Interest or rent—Distress after maturity without fixing new tenancy—Interest as damages—Rent more than six months overdue.

In the year 1881, A made a mortgage to the defendants, maturing in 1886, in which was contained a proviso under the "short form" that the mortgagees might distrain for arrears of interest, and a special provision by which A leased the lands until the maturity of the mortgage at a rental of the same amount as the interest. A mortgaged his goods to B in January, 1887. In August, 1888, the defendants distrained on these goods for rent or interest due in 1886, 1887 and 1888. In two actions for illegal distress brought by A and B respectively,

Held, on the evidence that there was no definite tenancy after the maturity of the mortgage in 1886; that the interest after ma-

turity was recoverable, not by the terms of the contract, but as damages; that a distress could not be made, as more than six months had elapsed after the expiry of the tenancy, and the rent becoming uncertain after the maturity of the mortgage, required a new fixation, and, therefore, there was no right of distress.

Powell v. Peck, 15 A. R. 138, and *Bickle v. Beatty*, 17 U. C. R. 469, cited and followed.

George Moberly, for plaintiffs.

McCarthy, Q.C., for defendants.

Practice.

Atmour, C. J.]

[Nov. 22.]

In re YOUNG v. PARKER & Co.

Prohibition—Division Court—Judgment summons—Partnership—R. S. O. c. 51, s. 108, s.s. 4, 5, 6.

After judgment obtained against the firm of P. & Co., in a Division Court, after service of summons upon M. P., who was in fact the only member of the firm, an after-judgment summons was issued and served on R. P. The Division Court judge determined that R. P. had made himself liable as a partner by holding himself out as such, and was bound by the judgment, and liable to be examined as a judgment debtor.

Held, on motion for prohibition, that s.s. 4, 5 and 6, of s. 108, of the Division Courts Act, R. S. O. c. 51, are applicable only to persons who are in truth partners, and prohibition was ordered.

Munster v. Roilton, 10 Q. B. D. 475; 11 Q. B. D. 435; 10 App. Cas. 680, referred to.

Lennox, for the motion.

A. H. Marsh, contra.

Mr. Dalton.]

[Nov. 17.]

IRWIN v. BROWN.

Counter-claim—Defence—Reply—Jurisdiction of court—Foreign defendant—Assets in jurisdiction—Set-off—Con. Rules 3, 271, 373.

A counter-claiming defendant is not a plaintiff in an action, nor is a counter-claim an action.