

for the defendant on a counterclaim, directing the amounts to be set off pro tanto and the balance to be paid to plaintiff with costs. The action was based on R.S.O. 1897, c. 342, s. 16, sub-s. 2, which, with slight verbal variation is taken from 2 W. & M., Sess. I., c. 5, s. 4. The Imperial Act says the owner "shall and may" recover double value. The R.S.O. simply says "may."

*Held*, 1. The pruning of expletives or superfluous words does not work a change in the effect of a statute. The English and Canadian cases expository of the statute before its adoption in this province are still binding; and the direction to a jury to find the value of the goods, and then give double the value, is still correct and applicable where a case is not tried by a judge without a jury.

2. There is no power under the Judicature Act, s. 57(3), enabling the High Court to relieve against this double value on the ground of its being a penalty or forfeiture. That would be to repeal what the legislature has distinctly provided for not so much in the way of a penalty, as to afford protection to tenants against unwarranted seizures and sales of property to the detriment of the tenant's rights. See *Stanley v. Wharton*, 9 Pri., p. 310.

3. The costs provided for are not in the position of ordinary costs of litigation, but are fixed by the statute itself, and the discretionary power given by rules of courts as to costs is not exercised in regard to costs given by statute: *Reen v. Gibson* (1891) 1 Q.B.D. 660.

4. The right to recover double value extends not only to the landlord but to the officials and bailiffs engaged in the illegal proceedings. See *Hope v. White*, 17 C.P. 52, and *Potter v. Bradley*, 10 Times L.R. 445.

*Masten*, K.C., and *Wadsworth*, for plaintiff. *G. S. Kerr*, K.C., and *Makins*, for defendant.

Divisional Court—Chy.]

[Oct. 28.]

WHITEHORN v. CANADIAN GUARDIAN LIFE INCE. CO.

*Life insurance—Default in payment of premiums—Days of grace—Extension by conduct—Waiver.*

Action by widow of deceased on a policy of insurance on his life. Policy was subject to conditions of prompt payment with a right to one month's grace, but void for non-payment unless reinstated. It was found that the defendants by their practice