

Moss, J.A.] PATTERSON v. CENTRAL CANADA L. & S. Co. [Feb. 26.

Permissive waste—Tenant for life—Growth of weeds—Leave to appeal—
R.S.O. 1897, c. 51, s. 77, sub-sec. 4.

An application by the plaintiffs for special leave to appeal to this Court from the order of a Divisional Court, affirming the judgment of Street, J., which was mainly in favour of the defendants, in an action by remaindermen against tenants-for-life for waste.

The plaintiffs made complaint with respect to several matters in which they alleged there had been error, but the most important claims rested upon the contention that a tenant-for-life is liable to the remainderman for permissive waste.

Held, that the question of fact as to the existence of thistles, mustard and quack grass at the time of the defendants taking possession must be deemed concluded by the finding of the trial judge, affirmed by the Divisional Court. And unless, as to them, the law was that the tenant for life was liable for permissive waste, the defendants were not liable for the deterioration they had occasioned. In view of the array of modern authority in favour of the rule that tenant-for-life is not liable for permissive waste, in the absence of some provision in the instrument creating his estate expressly imposing the duty to keep in repair, no case has been made out for further litigating these questions in this action. See *Zimmerman v. O'Reilly*, 14 Gr. 646, where the question was decided against the remainderman. Eliminating this, the other matters were not sufficient to bring the case within s. 4 of s. 77 of the Judicature Act, R.S.O. 1897, c. 51.

N. F. Davidson, for plaintiffs. *D. W. Dumble*, for defendants.

Meredith, C.J., Rose, J., MacMahon, J.]

[March 3

McBRIDE v. HAMILTON PROVIDENT AND LOAN SOCIETY.

Distress—Mortgagor and mortgagee—Death of mortgagor—Seizure of goods of another on mortgaged premises—Authority of bailiff—Principal and agent—Mortgagee's agent controlling bailiff—Evidence—Admissibility—Letter of solicitor before action.

An appeal by the defendants from the judgment of the Judge of County Court of Lambton in favor of the plaintiff for \$125 damages upon the findings of the jury in an action for trespass and illegal seizure and sale of the plaintiff's goods upon premises mortgaged to the defendants by Mary Ann McBride, the seizure and sale purporting to be under a warrant issued by the defendants to their bailiff to distraint the goods of Mary Ann McBride for arrears due under their mortgage, she having been for some years dead at the time of the seizure, of which the defendants were ignorant. When the defendants found that the goods were those of the plaintiff, a brother of the deceased, they ordered their bailiff to withdraw. The jury, however, found that one Stone was the agent of the defendants, and instructed the seizure and sale after he had been told that the goods were the plaintiff's.