

S.C.]

NOTES OF CASES.

[C. of A.]

NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW
SOCIETY.

SUPREME COURT.

NORTH ONTARIO ELECTION PETITION.
WHEELER V. GIBBS.

Parliamentary Election—Costs—Set-off.

The respondent having succeeded in having his election petition against the return of the appellant maintained with costs, but who, on appeal to the Supreme Court (which appeal was limited to the question of disqualification), was condemned to pay the costs of appeal, moved in the Supreme Court to set off the taxed costs of the respondent in the court below against the taxed costs of the appellant in the Supreme Court.

The Court ordered that the costs taxed and allowed to the appellant in this Court be set off against the costs which may be taxed and allowed to the respondent in the Court below by the proper officer thereof on the taxation of said costs, and be a satisfaction *pro tanto* of the said last-mentioned costs when so set off, and that all proceedings on the execution issued in this cause out of the Supreme Court be stayed.

H. Cameron, Q. C., for Respondent.

McTavish, for Appellant.

COURT OF APPEAL.

C. C. Hastings.]

[March 23.]

IN RE LEWIS, INSOLVENT.

*Insolvent Act of 1875—Recovery of debts under
sec. 68.*

Where certain creditors of the insolvent take proceedings under sec. 68 of the Insolvent Act, 1875, in the name of the assignee, to recover a debt due the insolvent, they are entitled to the amount recovered, and the estate cannot benefit by the recovery in any way unless indirectly, when the creditors' claims are extinguished thereby, and consequently their right to receive further dividends from the estate is gone.

Where in such a case the debt was paid to the assignee, who refused to pay it to the cre-

ditors who had taken the proceedings to recover it:

Held, that their proper remedy was by application to the Judge of the Insolvent Court.

MacLennan, Q.C., for the appellant.

J. K. Kerr, Q.C., for the respondent.

Appeal dismissed.

Q. B.]

[March 26.]

HARRISON V. PINKEY.

*Lease—Proviso on determination—Option to
harvest crops, or be paid for—Construction.*

A lease from D. to the plaintiff of a farm contained the following proviso, "And the said lessee agrees to give up possession of said premises before expiration of lease, if sold by said lessor, upon receiving six months' notice, said notice to be given before 1st April, and should the said lessor give the said lessee notice to quit premises during any year of said lease, then the said lessee will have the privilege of harvesting and threshing the crops of the summer fallow, or the work done on said summer fallow will be paid for at a fair and reasonable valuation." D. agreed to sell the land to the defendant on 22nd August, 1877, and on the same day gave the plaintiff notice to quit possession on the 1st April, 1878. Plaintiff then put in a crop and quitted possession pursuant to the notice, and the land was conveyed to the defendant in the latter month. Neither D. nor the defendant offered to pay for either the work or the crop.

Held, affirming the decision of the Court below (44 U. C. R. 509), that the construction of the proviso was that the tenant was to have the privilege of harvesting any crops which might have been put in on the summer fallow, unless the landlord elected to pay for them at a valuation; that he had never parted with his property in the crop, and that he was therefore entitled to recover in trover against the purchaser of the farm.

Per PATTERSON, J. A. It the lessor elected to pay for the work he was bound to do so when he gave the notice, or at latest when he resumed possession.

Tilt, for appellant.

C. Robinson, Q.C., for respondent.