

*Held*, that the expression "arrears of rent due for three months following the execution of such assignment," in s. 34 of the Landlord and Tenant's Act, R.S.O., c. 170, means "arrears of rent becoming due during the three months following the execution of such assignment;" and the landlord was, therefore, apart from the proviso, entitled to the quarter's rent payable in advance on the quarter day next after the date of the assignment.

*Held*, also, that the expression "the preferential lien of the landlord for rent," in s. 34, has the same meaning that it had under the Insolvent Acts; and the landlord was entitled to be paid the amount found due to him, as a preferred creditor, out of the proceeds of the goods upon the premises at the date of the assignment, which were subject to distress, although there was no actual distress.

*E. G. Porter*, for the plaintiff. *V. J. Hughes*, for the defendant.

Rose, J., MacMahon, J.] SMYTHE v. MARTIN. [Oct. 10.

*Pleading—Statement of claim—Extension of claim made in writ of summons—Rule 244.*

An appeal by the defendants from an order of ARMOUR, C.J., in Chambers, reversing an order of one of the local judges at Windsor, whereby part of the statement of claim was struck out, and restoring such part. The writ of summons was indorsed with a claim for an injunction to restrain waste. The statement of claim went further, and claimed to recover possession of the land in respect of which the injunction was sought.

*Held*, that what was claimed by the pleading was an "extension" of what was claimed by the writ, within the meaning of Rule 244. *United Telephone Co. v. Tasker*, 59 L.T.N.S. 852, and *Cave v. Crew*, 41 W.R. 359, 3 R. 401, distinguished. Appeal dismissed with costs to the plaintiff in any event.

*F. C. Cooke*, for defendants. *H. Cassels*, for plaintiff.

Armour, C.J.] IN RE YOUNG. [Oct. 11.

*Infants—Custody—Paternal right—Maternal right—Separation of family.*

Application by Andrew Young, upon the return of a writ of habeas corpus, addressed to Maggie Young, his wife, and William Taylor, her father, for an order for the delivery of the applicant's seven children, the eldest of whom was fifteen years old, to him, and upon the petition of Maggie Young, their mother, for an order awarding her the custody of such children.

*Held*, on the evidence, that the father was guilty of adultery with a woman, a servant in his own house, and was also guilty of making loose and unfounded insinuations against his wife's chastity, and of using foul and indecent language to her and their children, and of being harsh and unkind, and at times cruel to her and them.

*Held*, that the provisions of R.S.O., c. 168, recognize the maternal right, as well as the paternal right, and require equal regard to be paid to the wishes of the mother as to those of the father, differing from the English statute in this respect, and rendering the decisions thereunder to some extent inapplicable here. The result of this is that where the wishes of the mother are