

annual rental value of \$1,200, while the other properties comprised in it were in the occupation of tenants of D., and were producing an annual rental of about \$2,000. After the execution of the mortgage, the properties continued to be occupied in the same manner by D., or his tenants, and payments under the mortgage were duly made by D. In 1887 the goods of D. on one of the properties comprised in the mortgage and occupied by him were seized under executions against him and sold, and the plaintiffs claimed as landlords that the proceeds of the sale should be applied first in payment of the amount due to them for the unpaid instalments of principal and interest of June and December, 1886.

Held, reversing the decision of the Divisional Court of the Queen's Bench Division (reported 15 O.R. 440), that this claim was well founded, the relation of landlord and tenant having been validly created between the parties, and the execution creditors in the absence of fraud not being entitled to complain.

Moss, Q.C., and A. O. Jeffery, for the appellants.

W. R. Meredith, Q.C., for the respondents.

RYAN v. CLARKSON.

Assignment for the benefit of creditors—Costs of creditor having execution in sheriff's hands—R.S.O., c. 124, s. 9.

Held, BURTON J.A., dissenting, affirming the judgment of ARMOUR, C.J., that under R.S.O., c. 124, s. 9, the costs for which an execution creditor has a lien, are the costs not of the execution only, but all the usual costs which could be recovered from the debtor under an execution.

Foy, Q.C., for the appellant.

Idington, Q.C. for the respondent.

LEMAY v. MACRAE.

Arbitration and award—Motion to set aside award—Admissions of arbitrator as to grounds upon which he proceeded—Draft award setting out grounds.

Held, affirming the judgment of ARMOUR, C.J., reported 16 O.R., 307, that where the action and all matters of account and counter claim therein, and all matters in difference between

the parties were by consent referred to the arbitration and final end and determination of a named person, and no provision was made for an appeal, his award, valid on its face, could not be attacked because of alleged errors in the principle upon which he proceeded, this principle being disclosed in a draft award not delivered with, or forming any part of, the formal award, and in conversations after the making of the award between the arbitrator and one of the solicitors for the attacking party. There being no misconduct or mistake of jurisdiction shown, the Court could not interfere.

East & West India Co. v. Kirk, 12 A.C., 738, considered.

Robinson, Q.C., and A. Ferguson for the appellant.

Delamere and F. H. Keefer for the respondents.

FERGUSON v. KENNEY.

Voluntary conveyance—Right of creditor to attack on ground of continuous indebtedness of grantor to him on current account.

The defendant made a voluntary conveyance to his wife of certain real estate owned by him. Without this real estate, his liabilities, among which was a debt to the plaintiffs of about \$1,500, exceeded his liabilities. He continued to deal largely with the plaintiffs down to the time of his failure some years afterwards, the balance then due them being about \$2,300, but much more than \$1,500 having been in the meantime paid to them.

Held, that in the case of a continuous dealing and account where the customer goes on paying with one hand on general account and purchasing fresh goods with the other hand to an equal or larger amount, with a constantly increasing balance against him, the creditor is from the commencement of such dealing, so long as his ultimate balance remains unpaid, in a position to attack an alleged voluntary conveyance.

Decision of BOYD, C. affirmed.

Moss, Q.C., and A. C. Galt for the appellants.

Geo. Kerr, jun., and Duggan for the respondents.