

Com. Pleas Div.]

NOTES OF CANADIAN CASES.

[Com. Pleas Div.]

COMMON PLEAS DIVISION.

Mr. Dalton, Q.C.] [December 23, 1886.
Galt, J.] [February 3, 1887.

MASSIE V. TORONTO PRINTING CO.

Landlord and tenant—Attachment of debts—Rent—R. S. O. ch. 136, secs. 2-6—Mortgagor and mortgagee.

R. S. O. ch. 136, secs. 2-6. does not contemplate any alteration of the law where the case remains strictly between landlord and tenant, but works a severance where any third interest intervenes.

And where a judgment creditor garnished rents accruing due from several tenants to the judgment debtors before the gale days had arrived,

Held, that he was entitled to payment over upon the gale days of the proportion of the rents which had accrued due on the day of service of the attaching order.

Quære, per GALT, J., Whether the rents could be garnished against a mortgagee of the landlord's?

F. J. Dunbar, for the plaintiff.

Inglis, for the defendants.

Cameron, C.J.]

RE HAMILTON AND MILTON ROAD CO. AND CORPORATION OF EAST FLAMBOROUGH.

Sale by one road company to another—Second company defectively organized—Minority of one of corporators—Sale abortive—By-law of municipality assuming road—Quashing same.

The H. and M. Road Co., the owners of a certain road and in possession thereof as a toll-road, levying and collecting tolls thereon, in 1879 assumed to sell the same to the H. and F. Road Co., who entered into possession thereof. Subsequently it was held by the Court of Appeal, on appeal from the judgment of WILSON, C.J., that the H. and F. Road Co. were not a duly incorporated company, because, while the Joint Stock Companies Act, R. S. O. ch. 152, required at least five corporators to enable a company to be incorporated, there were not five here—there being only four alleged corporators, and one of whom was a minor. The defendants thereupon passed the by-law in question, assuming possession of the

road. On an application by the H. and M. Road Co. to quash said by-law,

Held, that the defendants' by-law was illegal and must be quashed: for that the effect of the judgment of the Court of Appeal was to restore to the applicants the franchises they held before the abortive sale took place—the road being kept alive as a toll-road, and repaired as such from time to time, and nothing transpired to justify the defendants in interfering with the road or assuming possession and control of it as the by-law authorized them to do.

Lash, Q.C., for the applicants.

Osler, Q.C., for the defendants.

Div'l Court.]

CITIZENS' INSURANCE CO. V. CLUXTON.

Principal and surety—Change in position of principal debtors—Release of surety—Renunciation clause—Joint contractors.

Action against defendants as sureties on a bond given to the plaintiffs to secure the faithful and diligent performance of B's (the principal) duties to the plaintiffs, including the paying over of moneys as to which there was alleged to be default. The bond, after reciting that B had been appointed agent for the defendant's company for the Province, and as such to discharge certain duties, and to receive certain moneys according to the definition of his duties contained in the instrument appointing him, dated 19th October, 1883, and as to which the parties thereby declared to have had due and sufficient communication. The condition was for the performance of such duties and payment over of moneys for which he should be responsible as such agent. The bond also contains the following clause: "And the said sureties in consideration of the premises hereby agree to waive any notice of any default the said B may at any time make in his duties as such agent, and to renounce to the benefits of division, discussion and all other benefits of sureties, consenting to be bound as fully in all respects as the said principal party." The agreement provided that B should be general agent for the Province, should have control over all local agents, except some six agencies, including Hamilton and Galt, and his compensation