

Com. Pleas.]

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NOTES OF CANADIAN CASES.

[Chan Div.]

The rent reserved was 20 cents, payable on the 1st July, 1880, in each and every year. The defendant continued to pay rent to M. and never was called upon to attorn or to pay rent to plaintiff, and received no notice to quit from M. prior to action brought and no demand of possession from the plaintiff until about the commencement of this action. In 1886 the plaintiff and defendant had a dispute about the plaintiff's boundary line, but defendant did not dispute plaintiff's title. The defendant claimed that the conveyance to the plaintiff did not affect his rights under his lease. The plaintiff, claiming that he was entitled to the possession of the land in question, brought an action therefor against the defendant.

*Held*, that the defendant was entitled to the possession until he received proper notice to quit.

*Walkem*, Q.C., for the plaintiff.

*Macguire*, Q.C., for the defendant.

Rose, J.]

#### THE BANK OF MONTREAL V. STEWART.

*Action for possession of land—Mortgage—Foreclosure—Trust—Statute of Limitations.*

The plaintiffs claimed the possession of certain land under a final order of foreclosure obtained on a mortgage to the plaintiff made by W. S., a brother of the defendant. The defendant set up that W. S. was merely a trustee for him, and that he was entitled to the land under the trust, and also by the Statute of Limitations.

*Held*, that the evidence failed to establish the defendant's contention, and the plaintiffs were entitled to recover.

*Hudspeth*, Q.C., for the plaintiffs.

*Lount*, Q.C., and *Stewart*, for the defendant.

#### CHANCERY DIVISION.

Rose, J.]

[March 19.]

#### MCCASKILL V. RODD.

*Illegal distress—No rent reserved—2 Wm. & M., sess. 1 c. 5, s. 5—Double value.*

In an action for illegal distress in which the learned judge who tried the case found that the plaintiff occupied the premises in question under an agreement with the defendant, by the terms of which no rent was payable by the plaintiff to the defendant, and that the distress was therefore illegal, plaintiff's counsel asked for double the value of the goods as damages under 2 Wm. & M. sess. 1 c. 5, s. 5.

*Held*, that the 5th section of the statute, by reference to the 2nd section, does not extend to a holding of land when there is no rent reserved, and that the plaintiff was not entitled to double value.

*J. A. McGillivray*, for plaintiff.

*D. J. McIntyre*, for defendant.

Boyd, C.]

[May 27.]

#### PRATT V. THE CORPORATION OF THE CITY OF STRATFORD.

*Municipal corporation—Jurisdiction over streets—Absence of by-law for the work—Damage to adjacent owners—Remedy by action or arbitration—46 Vict. c. 18 (O.).*

The plaintiff was the owner of certain premises which were injuriously affected by the raising of the street by the defendants in building a bridge and its approaches, brought an action for damages.

*Held*, that he could not avail himself of the absence of a by-law for the construction of the bridge in order to proceed by way of an action for damages, that his remedy was under the arbitration clauses of the Consolidated Municipal Act, 1883, 46 Vict. c. 18 (O.), for compensation, and his action was dismissed with costs.

An owner of land has by common law no vested right to the continuance of the highway at the level it was when he purchased.

The corporation, as owners or trustees for the public, have the right to repair and im-