

and admit insolvency and consent to be wound up, but the fact of such insolvency must be disclosed on the material on which the petition is based.

F. E. Hodgins, K.C., for the petitioner and the company.

Meredith, C.J.C.P., Maclaren, J.A., MacMahon, J.]

[March 19.

LAMBERT *v.* CLARK.

Division Court—Appeal from—Amount in dispute—Quashing appeal.

The plaintiff brought an action in a Division Court for \$100.75, the amount of a promissory note for \$64.87 and \$35.38 interest on it, and recovered a judgment for \$83.90; the trial Judge finding against an alleged release set up by the defendant, but only allowing \$13.13 for interest instead of \$35.38 as claimed. A motion for a new trial was refused. On an appeal to a Divisional Court, it was

Held, that "the sum in dispute upon the appeal" under s. 154 of the Division Courts Act, R.S.O. 1897, c. 60, was the \$83.90, and as it did not exceed \$100, a motion to quash the appeal was allowed.

Petrie v. Machan (1897), 28 O.R. 504, distinguished.

Middleton, for the appeal. *C. A. Moss*, contra.

Province of Manitoba.

KING'S BENCH.

Full Court.]

MCDONALD *v.* FRASER.

[Feb. 1.

Landlord and tenant—Distress—Second distress for rent due at date of first distress—Appraisement—Appraisers not sworn.

The landlord distrained on 2nd February for balance of rent due on 29th December preceding, and on 3rd February he put in a second distress for a month's rent due on 29th January.

Held, following Woodfall on Landlord and Tenant, 16 ed, p. 523, that the second distress, being for a different gale of rent, was not illegal. The goods were appraised by two appraisers but they had not been sworn as required by the Statute 2 W. and M., sess. 1, c. 5, and the plaintiff claimed that the sale of the distrained goods was therefore illegal.

Held, that, under 11 Geo. 2, c. 19, s. 19, the want of a sworn appraisement was only an irregularity in the proceedings and that the plaintiff could only recover such special damages as he could shew to have resulted, and that he had shown none.

Lucas v. Tarlton, 3 H.N. 116, and *Rodgers v. Parker*, 18 C.B. 112, followed.

Monkmon, for plaintiff. *Mulock*, K.C., for defendants.