

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.]

[Feb. 23.

ARGLE v. McMATH.

Landlord and tenant—Fixtures—Short Forms Act, R.S.O., c. 106—Covenants—Forfeiture—Assignment for benefit of creditors—R.S.O., c. 143, s. 11—Notice—Re-entry—Election—Removal of fixtures—Time—Interference—Remedy.

The term "fixtures," as used in the extended form of the covenants to repair and leave the premises in good repair in a lease made pursuant to the Short Forms Act, R.S.O., c. 106, includes only irremovable fixtures, which are such things as may be affixed to (e.g., doors and windows) or placed on (e.g., rail fences) the freehold by the tenant, the property in which passes to the landlord immediately upon their being so affixed or placed, and in which the tenant at the same time ceases to have any property; and does not include removable fixtures, which are such things as may be affixed to the freehold for the purposes of trade or of domestic convenience or ornament, a qualified property in which remains in the tenant, or such things as may be affixed to the freehold for merely a temporary purpose, or for the more complete enjoyment and use of them as chattels, the absolute property in which remains in the tenant.

The provisions of s. 11 of R.S.O., c. 143, do not extend to a forfeiture of the term under a stipulation in the lease that if the lessees should make any assignment for the benefit of creditors the term should immediately become forfeited, and such forfeiture is, therefore, enforceable without notice served upon the lessees.

Where the lessor has elected to re-enter for a forfeiture, the lessee has the right, while he remains in possession, to remove fixture put up by him for the purposes of his trade, and has a reasonable time after such election within which to do so.

And where he attempts to do so within a reasonable time, and is prevented by the lessor, the latter is liable to an action for the value.

Judgment of BOYD, C., reversed.

Shepley, Q.C., for the plaintiff.

William Macdonald for the defendant.

Div'l Court.]

[March 9

WYTHE v. MANUFACTURERS' ACCIDENT INSURANCE CO.

Contract—Employer's liability policy—Condition—Construction—Defence of actions brought by employees.

In an action upon an employer's liability policy, whereby the defendants agreed to pay the plaintiff all sums up to a certain limit and full costs of suit, if any in respect of which the plaintiff should become liable to his employees for