

*Smoke and Wilson*, (Napanee) for defendants *Wilson, Carson & Amey. Ruttan*, for the Official Guardian.

*Deroche*, Q.C., for the defendants the School Trustees and the defendants the Trustees of the Presbyterian Church.

*Preston*, Q.C., for the several legatees.

*Gibson*, for the Attorney-General of Ontario.

MEREDITH, C.J.]

[Jan. 3.

HARPELLE v. CARROLL.

*Distress—Withdrawal—Arrangement with tenant—Second distress—Fraud—58 Vict. c. 26, sec. 4—Construction of.*

After a landlord had distrained for rent, he withdrew the distress under an arrangement made with the tenant, whereby the tenant gave him a chattel mortgage on the goods and chattels, the mortgage containing a provision that in case the mortgagee should feel unsafe or insecure, or deem the goods in danger of being sold or removed, the mortgage money should immediately become due and payable. The mortgagee, before the time for payment had elapsed, deeming himself unsafe, and the goods liable to be sold, and having ascertained that the mortgagee had fraudulently concealed from him the existence of a prior mortgage to the defendant, issued a second distress warrant to distrain, as well for the said rent as for another year's rent which had become due in the meantime.

*Held*, that the withdrawal of the first distress, not being a voluntary one, but under the special arrangement, did not prevent the landlord from making the second distress.

*Semble*, the second distress could be supported by reason of the first distress having been withdrawn through the tenant's fraud.

Sec. 4 of 58 Vict., c. 26, (O) does not preclude a right of distress, unless there is an express contract therefor contained in the lease; and in any event, the section is not retrospective.

*Machar*, for the plaintiff.

*Smyth*, Q.C., and *Deroche*, Q.C., for the defendant.

MEREDITH, C.J.]

[Jan. 4.

BROOKS v. GIBSON.

*Statute of Limitations—Trespasser—Possession—Tax title, R.S.O., c. 111 sec. 5, s-s. 4—Construction of.*

A person claiming title by possession to land derived through prior trespassers, and by his own possession, can only acquire a title to the land of which there has been actual possession for the statutory period.

Sub-sec. 4 of sec. 5 of the Real Property Limitations Act, R.S.O., c. 111, requiring twenty years possession as to non-cultivated lands, only operates in favor of the patentee and those claiming under him, and not to a title acquired under a sale for taxes.

*Hamilton Cassels*, for the plaintiff.

*E. G. Porter*, contra.