

premises, the fact of the mortgagor being allowed as a matter of grace to go in and out of the premises for the purpose of carrying on some work, does not constitute an abandonment of the distress.

Where the evidence in other respects is clear that there was a seizure under the distress warrant of all of the goods, the fact of an incompleteness in the inventory merely, due to the mortgagor's action in the matter, cannot of itself displace the true facts of the seizure.

Where the time for payment of mortgage money is extended by an agreement, the proviso for redemption is to be read as a new and then existing proviso, so as to justify a distress for non-payment thereunder.

Where by the terms of assignment of mortgage authority is given to distrain for arrears of interest, the assignee may properly distrain for such arrears.

The fact of swearing the appraisers after the making the appraisement is an irregularity, and is a ground for damages only, and does not render the distress and subsequent proceedings invalid. No such ground was set up in the pleadings here, and, even if it had been, it was held that only nominal damages would have been allowed.

The sale under a distress warrant, after notice of exercising the power of sale in the mortgage, and before the expiry of the period provided thereby, but, after an order had been obtained from a judge permitting the sale to take place under the distress warrant, is a valid one, and is not affected by R.S.O., c. 121, s. 31.

A claim for damages, by way of counter-claim, for excluding the mortgagor from the premises, was held to be not sustainable by reason of the mortgagee being entitled to possession on default while, in any event, the possession here was with the mortgagor's consent.

*Rowell and Plaxton* for plaintiff. *Pepler, Q.C., and McCarthy* for defendants.

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Meredith, C.J.]

RAE v. RAE.

[July 16.

*Alimony—Desertion—Offer to receive wife back—Bona fides.*

In an action for alimony, on the ground of desertion, in order to give effect to the husband's offer and willingness to receive back his wife, the judge must be satisfied that it is made bona fide, and not merely set up to prevent the pronouncement of judgment against him. *Crothers v. Crothers*, 1 P. & D. 568 referred to.

*Aylesworth, Q.C.,* for plaintiff. *C. J. Holman,* for defendants.

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Street, J.]

THOMPSON v. CITY OF TORONTO.

[July 17.

*Municipal corporations—Local improvements—Street—Repair of—R.S.O. c. 223, 62 Vict. (2) c. 26, 41 (O)—Applicants therefor—Status of.*

To obtain an order under R.S.O. c. 223, as amended by s. 41 of 62 Vict. (2) c. 26 (O), for the repair of a pavement on a street which had been