

mortgagees to distrain for rent under a tenancy validly created, but only to the right to distrain for interest as such provided for in the ordinary distress clause in the short form of mortgages referred to in the Act respecting Short Form of Indentures.

Appeal allowed with costs, and plaintiff non-suited.

*Wilson*, for plaintiff.

*Clark*, for defendants.

## North-West Territories.

### WESTERN ASSINIBOIA JUDICIAL DISTRICT.

RICHARDSON, J.,  
In Chambers.

[March 3.

WHITEFORD *v.* BONNEAU, ET AL.

*Practice—Appeal to Court in banc—Stay of execution—Special circumstances—*  
*Secs. 319 & 515 of Judicature Ordinance.*

Judgment on Nov. 16th, 1895, declaring the defendants mortgagees in possession of certain lands of plaintiff in Manitoba; directing accounts to be taken of moneys received by defendants on behalf of plaintiff, and further directing that defendants should have a lien on the lands for the balance (if any) found due them by accounts. Defendants had served notice of appeal to the Court in banc from the above judgment. The formal order was served on defendants' advocate January 16th, 1895. By it defendants were directed to pay plaintiff forthwith after taxation the costs of the action up to and including judgment, less certain costs of amendment by plaintiff, to be set off. Plaintiff having issued execution for the amount of these costs, defendants applied by summons for a stay of execution until the accounts should have been taken, and for an order for leave to pay into Court the amount of taxed costs. The application was supported by an affidavit of the defendants' advocate, and by evidence taken at the trial, which showed that the defendants resided 80 miles from the railroad, and that there had been only one mail to their place of residence since service of the formal order, for which reason their accounts had not been brought in; that the accounts might disclose a balance due defendants exceeding the value of the lands; that the plaintiff had sworn at the trial that he had no means other than the property involved in the present action, and that the defendants were ready and willing to bring into Court the amount of the taxed costs.

For the defendants *Barker v. Lavery*, 14 Q.B.D. 769, and *McCarthy v. Cork Steam Packet Co.*, 16 L.R. Ir. 194, were relied upon to show that power to stay execution is discretionary, and should be exercised under the present circumstances. *Lynde v. Waithman*, L.R., August, 1895, was also cited as showing the principle upon which the Courts act for the protection of suitors, and *Jersey (Earl of) v. Uxbridge Sanitary Authority*, 64 L.T. 858, to