

Whether then this settlement purports to release the costs in question or not, I think it should be declared that the right of defendant's solicitor to enforce the payment of such is not extinguished; that it should be referred to the Master of this court, to ascertain the amount of those costs, and that the plaintiffs should be ordered to pay the same, together with the costs of these applications.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE OF ONTARIO.

COURT OF APPEAL.

7th D.C., Stormont, etc.]

[Dec. 12.

SULLIVAN *v.* FRANCIS.

Execution—Fraud—Collusive purchase—Division Courts—Practice—Appeal—Notes of evidence—Security.

The goods of a tenant were seized for rent and offered for sale by a bailiff. The tenant bid them in and they were immediately seized under an execution against him on behalf of an execution creditor of the tenant. They were then claimed by a third person who alleged that the tenant was in reality bidding for him, and this claimant paid the purchase money:

Held, that if the goods were sold at an under-value owing to the bids being made by the tenant ostensibly for himself as part of a scheme between the tenant and claimant to (effect that end) defeat creditors by keeping down the price, the sale would be fraudulent and void as against the creditors of the tenant, though it would be good as far as the purchase money was concerned, which could not in any event be recovered back by the claimant.

Appeal allowed and new trial ordered.

The right of appeal from the Division Court is not lost because the judge omits in an appealable case to take down the evidence at the trial in writing.

The security to be given on a Division Court appeal is now regulated by 53 Vict., c. 19 (O.), and is to be either by a bond in the sum of \$100 or a cash deposit of \$50.

H. H. Dewart for the appellant.

A. H. Marsh, Q.C., for the respondent.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

STREET, J.]

[Dec. 6.

IN RE SIMS *v.* KELLY.

Prohibition—Division Court—Erroneous interpretation of statute—Husband and wife—Magistrate's order for payment of maintenance money under 51 Vict., c. 23, s. 2—Action to recover arrears.

Where new rights are given by a statute with specific remedies for their enforcement, the remedy is confined to those specifically given. And where a wife obtained a magistrate's order under 51 Vict., c. 23, s. 2, for payment by her husband of a weekly sum for her support;

Held, that her rights were subject to the provisions of the statute, one of which was that payment could be enforced only in the manner pointed out by the statute, and that if the husband succeeded in shewing the magistrate that he was unable to pay, payment would not be enforced; and therefore an action in the Division Court for arrears of payments, under the order, could not be maintained against her husband.

The facts not being in dispute, prohibition to the Division Court was granted on the ground that the judge in that court had given an erroneous interpretation to the Act referred to in holding that the magistrate's order was equivalent to the final judgment of a court, and that an action upon it would lie.

Wilkes, Q.C., for the defendant.

W. D. Jones for the plaintiffs.

Chancery Division.

FERGUSON, J.]

[Nov. 28.

BUNNELL *v.* GORDON.

Declaration judgment—Inchoate right to dower—Purely contingent possibility—R.S.O., 1887, c. 44, s. 52, s.s. 5.

Action for a declaration that the plaintiff was entitled to an inchoate right of dower in certain lands.

Held, that though an inchoate right of dower might be considered as a present right to a contingent future interest in the land in question, yet it was not a case where a declaratory decree such as was asked should be made, though