

ing his title was on the caveatee, and that he should be made plaintiff in the issue. *Howell v. Montgomery* 499

See AFFIDAVIT; PRODUCTION OF DOCUMENTS.

REAL PROPERTY LIMITATION ACT.

Land outside jurisdiction of the Court.

See MORTGAGE, 5.

REPLEVIN.

There is no appeal from a County Court in an action of replevin, because the question in issue is not a money demand, but one of title to goods.

See COUNTY COURT, 1.

RESIDENCE OF GARNISHEE.

The affidavit on which a garnishing order is obtained, must state that the garnishee "is within the jurisdiction of the Court."

See GARNISHMENT.

SALE OF GOODS.

1. *Sale of machine — Agreement under seal — Collateral agreement — Demurrer.* — To a declaration on an agreement, under seal, for the purchase by the defendant of a separator, for which he was to pay \$300 cash and to give three promissory notes, the defendant pleaded by his 5th and 14th pleas, that in consideration of his entering into that agreement, the plaintiffs agreed to purchase from him a second-hand separator for \$200, the \$200

to be credited on the first note falling due; that he delivered the second-hand machine, etc. The defendant also filed a counter-claim setting up a similar state of facts, and claiming damages for breach of agreement in not applying the purchase money in payment of the note. The plaintiffs replied to these pleas and counter-claim that the agreement set up by the defendant was not under seal.

On demurrer,

Held, that the agreement set up in the pleas was an independent collateral agreement, and the pleas were, or amounted to, pleas of accord and satisfaction.

Held, also, that the agreement set up in the counter-claim was an independent collateral agreement, for a breach of which damages could be claimed. *Case v. Laird*, 204.

2. *Sale of horse — Contagious disease — Animals' Diseases Act — Warranty — Caveator emptor.* — The Diseases of Animals Act, 54 Vic. c. 17, s. 16, (R. S. M. c. 5, s. 25,) provides that, "Any person who sells or disposes of any animal infected with or labouring under any infectious or contagious disease, or any animal respecting which there is cause of suspicion that such animal is infected shall for every such offence incur a penalty of one hundred dollars."

The defendant sold to plaintiff a horse suffering from glanders, but the trial Judge found that he had no cause for suspicion that the animal was infected. There was no warranty. In an action for damages,

Held, that the defendant was not