

made by other customers of the bank for the accommodation of W.

G. had a mortgage on the same lands subsequent to the T. Bank, and made a tender to the T. Bank (who were threatening to sell the land under the power of sale in their mortgage) of what they claimed as due to them, but also insisted on the execution at once by them of a simple assignment of the mortgage debt and mortgaged lands to G., with a covenant that the amount claimed was really due. The T. Bank refused to accept the tender as so made, and G. now moved for an interim injunction to restrain the bank from dealing with their security until the trial of this action, in which G. sought an account of what was due the T. Bank, and on payment, an assignment to him.

*Held*, that the motion must be dismissed with costs, which might be added to the claim of the T. Bank.

Under R. S. O. (1887) c. 102, s. 2, G. was entitled to demand an assignment to himself if he wished, but he could not insist on the execution of the assignment tendered, as the T. Bank was entitled to have the assignment show the precise character in which G. was paying the money, and also the notes in respect to which the bank were claiming, and who were accommodation makers thereof, and the bank was not bound to give a covenant as to what was due. G., however, was entitled to an account, and re-payment of any excess.

*T. P. Galt*, for the plaintiff.

*Lash*, Q.C., and *Lefroy*, for the defendants.

### Practice.

C. P. Div'l Court.]

[Sept. 11.]

BALL v. CATHCART.

*Ejectment—Res judicata—Judgment by default of appearance—Divisional Court, powers of.*

Since the Ontario Judicature Act, a judgment recovered in an action of ejectment by default of appearance will sustain a defence of *res judicata* to an action subsequently brought by the defendant to try the same question.

*Cochrane v. Hamilton Provident and Loan Society*, 15 O. R. 138, followed.

A Divisional Court has no power to hear an appeal direct from the Master in Chambers, or a substantive motion to set aside a judgment by default of appearance.

*Masten*, for the plaintiff.

*Aylesworth*, for the defendant.

Armour, C.J.]

[Oct. 3.]

ROWLAND v. LURWELL.

*Reference, scope of—Judgment—Pleadings—Con. Rules 56, 57.*

A judgment directed that the Master should take the usual accounts for redemption or foreclosure of mortgaged premises, and should also take the accounts in respect to certain other matters set out in the pleadings. Under this the defendant contended that the Master should take into account a certain sale by the plaintiff, as mortgagee to a person who, it appeared, had not paid his purchase-money. There was no specific mention of this sale in the pleadings or judgment.

*Held*, that the proposed inquiry was not within the scope of the pleadings or the judgment or of Con. Rules 56 and 57; and the question which it would raise were questions which ought to have been raised by the pleadings and determined by the court, and not delegated to the Master. *Bickford v. Grand Junction R. W. Co.*, 1 S. C. R. at p. 725; *McDougall v. Lindsay Paper Mill Co.*, 20 U. C. L. J. 133; *Wiley v. Ledyard*, ib. 142, referred to.

*E. R. Cameron*, for the plaintiff.

*R. M. Meredith*, for the defendant.

Armour, C.J.]

[Oct. 26.]

SCOTT v. DALY.

*Costs—Party and party—Status of solicitor.*

The defendant in this action was represented by a firm, purporting to be a firm of solicitors, one of the members, however, not being a duly admitted or certificated solicitor. The plaintiff objected to the costs awarded the defendant in the action being taxed to him.