

vent the defendant from setting off High Court costs.

On appeal, a Divisional Court varied the order as to costs so as to give the plaintiff such costs only as he would have recovered under R. S. O. (1877) c. 50, s. 347, ss. 3, where the judge at the trial did not certify.

Held, that there was no reason for making the defendant pay extra costs for the mistake of the plaintiff in bringing his action in the High Court.

J. W. Nesbitt, for the plaintiff.

Aylesworth and *H. H. Collier*, for the defendant.

Armour, C.J.]

[June 29.

In re WHITE P. GALBRAITH.

Mandamus—Division Court—Amount—Jurisdiction—Abandoning excess of claim—Amendment at trial—Discretion.

General Rule 8 of the Division Courts provides that when the excess of a claim is abandoned, to bring the amount within the jurisdiction, it must be done in the first instance on the claim.

Held, that there is nothing in this rule to prevent the Division Court Judge permitting the plaintiff to amend his claim before or at the trial, upon such terms as he thinks fit; and general Rule 118, section 304, of the Division Courts Act afford ample authority for permitting such amendment; but the judge cannot be compelled by *mandamus* to exercise his discretion to permit an amendment.

Hands, for the plaintiff.

C. J. Holman, for the defendant.

Armour, C. J.]

[June 29.

ALPHA OIL CO. *v.* DONNELLY.

Replevin—Direction of writ to liquidator of plaintiffs as sheriff—Irregularity—Waiver—R. S. O. (1877) c. 53 s. 9.

In a replevin action the writ was directed to a sheriff who was the sole liquidator of the plaintiffs, and as such instituted the action.

Held, that this was at most an irregularity, and it was too late for the defendant to raise the objection after appearance.

R. S. O. (1877), c. 53, s. 9, applies to the case of an application on the merits, and not for irregularity only.

Quere, whether, even if the objection had been taken in time, it should have prevailed, having regard to the kind of duty the sheriff has to perform in executing a writ of replevin, and to the position of the liquidator as a mere officer of the court.

C. J. Holman, for the plaintiffs.

Aylesworth, for the defendant.

C. P. Divisional Court.]

[June 29.

DISHER *v.* DISHER.

Writ of attachment—Setting aside—Powers of County Judge—Absconding Debtors' Act.

Although a County Court Judge has power under s. 2 of the Absconding Debtors' Act, R. S. O. (1877), c. 66, to order the issue of a writ of attachment from the High Court, such judge has no jurisdiction to entertain an application to set aside the writ.

Aylesworth and *Lancaster*, for the plaintiff.

W. M. Douglas, for the defendant.

Law Students' Department.

The following papers were set at the Law Society Examination for certificates of fitness and for call before Easter Term, 1888.

Certificate of Fitness.

REAL PROPERTY AND WILLS.

1. State shortly how a purchaser of lands may forego his right to have a good title made, and give examples.

2. Explain the operation and effect of the Registry Act with respect to competing purchasers.

3. When does the purchaser of mortgaged land incur an obligation to remove the mortgage, and when not?

4. Are the Statutes of Mortmain in force in Ontario? Why?

5. A devise to trustees in trust to permit A. B. to take the rents and profits. A devise to trustees in trust to pay A. B. the rents and profits. Was there any difference in the con-