the appellant, the defendant Fenton; *Pearson* appeared for the defendant Brassey, who had served cross notice of appeal, on a matter affecting his co-respondent; and *Kekewick* appeared for the plaintiffs.

JESSEL, M. R.—Under the present practice a notice is equivalent to a cross appeal. It is a mere accident whether Mr. Pearson's clients presented their appeal first, or Mr. Medd's client, because, if Mr. Pearson's clients had been first we should have got the notice from Mr. Medd's client, therefore there really is an appeal and a cross-appeal. I do not know how to divide the costs except equally. The result will be that the appellant, represented by Mr. Medd, will pay half the costs of all the respondents, and the respondents, represented by Mr. Kekewick, will pay the other half of the other respondents.

BAGGALLAY and LUSH, L.JJ., concurred.

[NOTE.—*Imp. O.* 58, *r.* 6, *is very similar to No.* 16 *of our G. O. Court of Appeal, which is incorporated into the new practice by Ont. Jud. Act, sec.* 39.]

PARKER v. WELLS.

Imp. O. 31 *r.* 19. *Ont. O.* 27 *r.* 17 (*No.* 235).

Where a defendant's answering an interrogatory cannot help the plaintiff to obtain a decree, but will only be of use to him, if he obtains a decree, the Court has a discretion, whether to oblige the defendant to answer it before trial, and will not do so where compelling such discovery would be oppressive.

[July 13, C. of A.—L. R. 18 Ch. D., 477.

The plaintiff, in this case, alleged that defendant E. held certain moneys which had been deposited with him in 1854, by G., in trust for S. and A. (deceased) successively, for their lives, and then for the plaintiff absolutely; but, that though E. paid the interest to S. and A., for their lives, he now refused to pay over the principal. E., by his defence, admitted the deposit, but denied the trust, and said he had only held the money for G. to draw upon, and had, many years ago, paid it away by G.'s directions; he denied payment of interest to S. and A.

The plaintiff delivered interrogatories, of which number 1 required E. to set out the dates and particulars of the payments made by him, out of the deposited sum; and number 3 required him to set out an account of all moneys paid by him since 1854 to S. and A., or either of them.

As to the 1st interrogatory, JESSEL, M. R., said:—A detailed account of the way in which the money was paid away will not help the plaintiff to prove the trust, and if she proves the trust, this detailed account is immaterial, since no payment made by the direction of G. would be a good discharge. The only use that could be made of the detailed discovery sought, would be to discredit the defendant's evidence, if he made any inaccurate statements, or failed to set out particulars. After this lapse of time, such a failure hardly would discredit him, and to require a man to go through his books for a number of years for such a purpose as this, would be oppressive.

As to interrogatory 3, he said:—An account of profits would not help the plaintiff to get a decree, and it would be oppressive to order it while the title of the plaintiff is in dispute. No inquiry is more difficult to work out than an inquiry that profits have been made by the employment of a particular sum of money in a business. . . It was urged by Mr. North, and I have often, when at the Bar, urged the same argument, that the defendant's answer may enable the plaintiff, if he succeeds, to get an immediate order for payment of the sum which the defendant admits; but that argument is worthless as regards such a point as this, for a defendant never makes such an admission of profits as the plaintiff could use for this purpose."

BRETT, L. J., said as to both interrogatories: "The answer to the interrogatories to which this appeal relates could not determine any issue in the action, and if they have to be given at all they ought not to be required to be given till after the issues have been decided."

COTTON, L. J., gave judgment to the same effect.

[NOTE.—*The Imperial and Ontario Orders are virtually identical.*]

CORRESPONDENCE.

Distress Clause in Mortgages.

To the Editor of the CANADA LAW JOURNAL:

DEAR SIR,—It appears that the case of *The Trust & Loan Co.* v. *Lawrason*, recently decided in the Court of Appeal, stands for argument in the Supreme Court. It is to be hoped that the position of several mortgages on the same property will be brought prominently to the attention of the judges. If a first, second, third and fourth mortgagee can, at the same time, be landlords of the same tenant, for the same lands, each armed with an independent power to distrain the goods of strangers, chattel property is exposed to a startling risk.

Perhaps the consideration of such a state of facts might assist in determining how far the purely feudal incident of distress can be annexed to a loan of money secured in any way whatever. The effect of attornment to several mortgagees, one after the other, would be well worth discussing.

Yours truly,

BARRISTER.