Chancery Division for a cause of action which by the English Judicature Act is assigned to that Division, but added thereto a claim for the return of certain goods and chattels, and damages for their detention. The plaintiff, after the defence had been put in, applied to have the issues of fact tried by a jury. But Pearson, J., held, and the Court of Appeal affirmed his decision, that the action must be tried by a judge without a jury, unless it could be made out that it was better to have it tried by a jury, and that not being shown, trial by jury was refused.

Appeal for costs.

The case of *Stevens* v. *Metropolitan District Railway Co.* (29 Ch. D. 60) is deserving of a brief notice, as showing the circumstances under which an appeal on the subject of costs may be successfully maintained. The plaintiff had applied for a sequestration against the defendants for an alleged breach of an injunction. Chitty, J., on the return of the motion was of opinion that there had been a breach by the defendants of the injunction, but under the circumstances made no order except that the defendants should pay the costs of the motion, the order being prefaced with a declaration that the defendants had committed a breach of the injunction. From this order the defendants appealed. It was contended by the plaintiffs that the order being for costs only no appeal could be had; but the Court of Appeal being of opinion on the law that the defendants had not been guilty of a breach of the injunction discharged the order of Chitty, J., and gave costs to the appellants, both of the appeal and of the motion before Chitty, J.

Bowen, L.J., thus shortly states the point: "When the judge's discretion over costs depends upon the existence of some breach of an injunction or misconduct, it seems to me that an appeal lies against his finding that there has been a breach of the injunction or misconduct, even although he only inflicts costs. Such a case is not, I think, within Ord. 65, r. 1 (Ont. R. 428). It really is an appeal against the finding, by means of which the judge clothes himself with the jurisdiction to inflict costs."

Railway company—Nuisance.

We now come to the case of *Truman* v. *London, Brighton and South Coast Railway* (29 Ch. D. 89), another decision of the Court of Appeal. The defendants were by their Act authorized to purchase by agreement any lands not exceeding in all fifty acres, in such places as should be deemed eligible for the purpose of receiving cattle conveyed, or to be conveyed, by their railway. The company under this power bought a piece of land adjoining one of their stations, and used it as a cattle dock. The noise of the cattle and the drovers was a nuisance to the occupiers of houses near the station, and they brought an action to restrain the defendants from continuing the nuisance. Mr. Justice North decided that the plaintiffs were entitled to the relief prayed, and the Court of Appeal affirmed his decision.

This case is important as showing the distinction between the rights of a railway company over land which they may take compulsorily for the purpose of carrying on their undertaking, and lands which they are empowered to purchase by agreement, and which are not defined by the statute. As regards the latter they are not exempt from the ordinary common law obligation so to use the land thus acquired as not to create a nuisance to occupants of neighbouring lands, unless expressly exonerated therefrom by statute.

Nuisance—Underground water—Pollution of well.

The case which follows, viz., *Ballard* v. *Tomlinson* (29 Ch. D. 115), is also a case