stance of the sequestrators. I ask myself if there is any inconvenience in making such an order, and I answer that I can find none. The court is administering the estate of a deceased testator, and one of the persons interested under the will of that testator has, in effect, encumbered his interest in the estate. Nothlng is more common than for the Court to assist an incumbrancer, though not a party to the action, and in giving effect here to the sequestration, I am only, in effect, allowing an incumbrancer to assert his claim. I shall, therefore, hold that the application of the sequestrators, by way o, motion in this action, was regular, and that the order *nisi* was properly made."

(2) With reference to the form of order, FRY J., expressed his opinion that the proper form would have been to direct payment of the annuity named by the trustees under the will being administered to the sequestrators, and to order that no other money should be paid to him, whose property was sequestered, without notice being given to the sequestrators.

(3) As to the point with reference to substituted service, FRY, J., said—

"The only question, according to *Hope* v. *Hope*, 4 DeG. M. & G. 328, is this: Has the service been effected on a person actually or impliedly authorized to receive service as agent for an absent principal, and is the inference irresistible that the fact of the service having been affected will be communicated by the agent to the principal? In this case I have not the slightest doubt that Messrs. Stibbard (the solicitors) will communicate with W. S. (the party affected). It is their duty to do so. If I had had the slightest doubt as to the point it would have been removed by the course which the proceedings have taken, for this very firm, without having received special instructions from W. S., have instructed counsel to appear for him."

[NOTE.—*Imp. O.* 9, *r.* 2, *and Ont. Rule No.* 34, *though not identical, are virtually so as regards the part illustrated by this case. The same may be said of Imp. O.* 45, *r.* 2, *and Ont. Rule No.* 370. *We have no order corresponding to Imp. O.* 47, *which gives a right to issue writs of sequestration, without order, to enforce certain judgments; but Ont. Rule* 329 *provides that judgments for payment of money may be enforced by any modes before in use, and G. O. Chy.* 391 *provides for the issue of writs of sequestration.*

THE QUEEN v. SAVIN.

Imp J. A., 1873, *ss.* 19, 45—*Ont. J. A. ss.* 13, 14, 15, 37, 33, 34.

[Dec. 20th, 1880. C. of A.—29 W. R. 688.

No leave is necessary to appeal from a decision of the Q. B. D. upon a special case stated by Quarter Sessions, where the Court is exercising its original common law jurisdiction. Dictum of Lord Cairns, C., in *Overseers of Walsall* v. *L. & N. W. Ry. Co.*, L. R. 4 App. Cas. at p. 42, to that effect approved of.

NOTE.—*The contents of Imp. J. A.*, 1873, *sec.* 19, *seem comprised, though in terms not quite identical, in Ont. J. A. secs.* 13, 14, 15 *and* 37, *Ont. J. A. sec.* 33 *is not identical with Imp. J. A. sec*, 45; *the former seems to require leave in all cases of appeals from the judgment or order of any Divisional Court or Judge to the Court of Appeal, except in the cases therein mentioned whereas the latter appears only to require leave in the case of appeals from the decision of Divisional Courts given on appeal from inferior Courts.*

WILLIAMS v. BRISCO.

Imp. O. 20, *n.* 14.— *Ont. O.*, 25, *r.* 12 (*No.* 214).

Costs — Default of Pleading — Setting aside judgment.

[May 19. Ch. D.—29 W. R., 713.

Action for specific performance of alleged agreement. Plaintiff obtained judgment against the defendant on substituted service and in default of pleading, plaintiff alleging defendant was avoiding service.

Dates were as follows: Writ issued Oct. 19, 1880; statement of claims delivered Nov. 19, 1880; judgment obtained Dec. 18, 1880; and served upon the defendant by affixing it to the door of his residence in February, 1881. The defendant now moved to set aside the judgment,