KOHLES v. Costello.—31st January, 1896.—Injunction—Jurisdiction of local Judge—Rules 1,419 (a) and 1,419 (b). D. Armour, for defendants, appealed from an order of local Judge at Guelph granting an injunction till the trial restraining defendant from trespassing upon certain lands, upon the grounds that the affidavit of the plaintiff did not show a sufficient case, and that the local Judge had no jurisdiction without consent of the parties to grant an injunction for more than eight days. W. H. Kingston, Q.C., for plaintiff, contra. Appeal allowed with costs here and below, the court holding that the local Judge was not given jurisdiction in a case of this kind by rule 1,419 (c), the solicitors for both parties residing in this country; but was confined in the case of injunctions to the jurisdiction given by rule 1,419 (a).

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BROUILLET v. Towse.—4th February, 1896.—Venue—The Judicature Act, 1895—Section 115. D Armour, for plaintiffs, appealed from order of Master in Chambers changing venue from Cornwall to Toronto. The action is for the price of goods sold and delivered. The plaintiff lives in Montreal, and the defendants lives in Toronto. Appeal allowed, the court holding that the case was not within section 115 of the judicature act, 1895. Costs in cause to plaintiff in any event.

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SMITH v. LOGAN.

23rd January, 1896.—Tender of appearance while registrar in act of signing judgment—Notice of appearance—Rules 281 and 739. Aylesworth, Q.C., for plaintiffs, appealed from two orders of senior local Judge at London directing that judgments signed for default of appearance be set aside, and dismissing plaintiffs' application for summary judgment under rule 739. Appellants contended that their default judgment was regularly signed, and defendant Wilson had disclosed no defence on the merits, but if judgment was not regularly signed and appearance was regularly entered, no defence being shown, plaintiffs were entitled to judgment under rule 739. Defendant Logan did not appear at all, but the order in appeal directed that the whole judgment should be set aside. It appeared that defendant Wilson's appearance was brought in while judgment was being entered, after it had been signed by the clerk, but before it was stamped. W. H. Blake for defendant Wilson, contra. Armour, C.J., was of opinion that the judgment was regular because the clerk, being engaged in signing the judgment when the defendant's solicitor came in with the appearance, was not obliged to give up the business of which he was seized in order to receive the appearance; that would be a reversing of the maxim, "*vigilantibus non dormientibus lex subvenit.*" Falconbridge, J., agreed with the Chief Justice, and was also of opinion that the appearance, after the proper time, was, without a notice of appearance, a mere nullity, and plaintiffs were not obliged to wait all day to see if a notice of appearance should be served. Street, J., dissented, saying that the affidavits showed that the judgment had not been entered when the defendant's solicitor tendered the appearance; that the officer's duty was to receive it when tendered, the nature of it having been made known to him, and after such tender he had no right to proceed with the entry of judgment; also that plaintiffs could not proceed to enter judgment until the time for serving notices of appearance had expired; also that summary judgment could not have been given, having regard to the affidavits filed, and therefore the judgment should be set aside. The order of the court is that the appeal be allowed with costs and the order setting aside the judgment rescinded with costs, and that the judgment and process issued thereupon be restored. But the defendant Wilson to be allowed in to defend upon terms similar to those in Merchants' Bank v. Scott, 16 P R., and the costs upon this branch are to be costs in the cause.

[Note—On going to press we have been informed that this case is being appealed. —ED. THE BARRISTER.]