

## JUDICATURE ACT—NOTANDA IN APPELATE PRACTICE

"eternal fitness of things." For example, it is not at all desirable, for obvious reasons, that County Clerks should draw or advise upon chattel mortgages, bills of sale, or renewals thereof, or prepare Surrogate Court papers, &c. Section 65 now enacts that "no Clerk or Registrar of the Surrogate Court shall for fee or reward draw or advise upon any will or other testamentary paper, or any paper or document connected with the duties of his office, for which such fee is not expressly allowed to him by the tariff in that behalf; and no Clerk of a County Court shall for fee or reward draw or advise upon any chattel mortgage, or any other paper or document connected with the duties of his office, and for which a fee is not expressly allowed by the tariff in that behalf."

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*THE JUDICATURE ACT.*

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The following points are noted from the advanced sheets of the work of Messrs. Taylor & Evart on this Act. We fear that other mistakes and difficulties will be discovered when the statute undergoes the test of practical working; but in a legislation of this kind we must not expect perfection:—

1. In England one of the rules requires that a writ for service out of the jurisdiction shall only be issued upon a judge's order; and it has been held that after a writ has been so issued it is unnecessary to obtain, as formerly, an order for leave to proceed, the matter to be proved upon both applications being obviously the same, viz., that the case was one proper for trial in England. In the Ontario Judicature Act the English rule requiring a judge's order is omitted, and it is provided that after service an order may be obtained allowing the service (O. VII. rules 1, 4.) But the English form of judge's order is left among the forms as No. 110. This order prescribes the time for service, which would

be very necessary in England, but not so in Ontario, where the rules themselves make provision (O. VII. 2.)

2. A Divisional Court is one of the Common Law Courts, or the Court of Chancery, with their present quota of three judges, yet in sec. 29 s. s. 3, a Divisional Court shall be constituted by "two or three, and no more," of the judges thereof.

3. As under O. IX. r. 3, judgment may be signed in default of appearance upon an acceptance of service and an undertaking to appear. The procedure in rule 6 should make the same provision.

4. O. IX. r. 6. Has a statement of claim to be delivered or not? The rule has it both ways. The difficulty arises from inserting in the rule taken from the English rule after the word "file" in the sixth line the words "and serve," without noticing the confusion it makes.

5. By sec. 62 the Accountant is to have the same judicial and other powers as he now has. There has been no such officer since 26 June, 1876, (see G. O. Chy. 625, 626. See also sec. 68.)

6. Are the Referee in Chambers and Mr. Dalton to continue to discharge their judicial functions, or be superseded by the Master in Chambers? (See sec. 62 and O. XLIX. r. 6.)

It would be well to remember that a number of corrections appear in this Act, as it now stands in the statute book just issued; the former issues are therefore not in all respects reliable.

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*NOTANDA IN APPELLATE PRACTICE.*

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In general, no appeal can be brought upon a mere matter of form: *Henderson v. Malcolm*, 2 Dow. 285. Where a question arose upon the form of the pleadings and the House of Lords was of opinion that the