

BARKER, J., }
In Equity. }

[March 24.

MCNEILL v. SIMON.

*Fraudulent conveyance—Suit to set aside—Plaintiff not a judgment creditor—
13 Eliz., c. 5—Joinder of parties.*

Plaintiff's bill sought to set aside as a fraudulent conveyance a transfer of land to the female defendant by her husband, who died intestate. Administration had not been taken out of his estate, and no action had been brought by the plaintiff to recover his debt. At the hearing of the suit objections were taken orally under sections 54 and 89 of the Equity Act, 1890, that the heir and personal representative of the deceased should have been joined in the suit, and that the suit could not be brought by the plaintiff until he obtained judgment on his debt, or made an effort, and was in process of obtaining it.

Ordered, on the undertaking of the defendant to take out administration of the estate of the deceased, that plaintiff enter an action for the recovery of his debt, and that until judgment therein be obtained, all proceedings in present suit be stayed.

Earle, Q.C., and C. A. Stockton, for plaintiff.

MacRae, for defendant.

BARKER, J., }
In Equity. }

[March 26.

TOBIQUE VALLEY RY. CO. v. CANADIAN PACIFIC RY. CO.

Practice—Motion to dismiss suit at close of plaintiff's case.

At the conclusion of plaintiffs' case the defendants moved for a dismissal of the suit on the grounds of insufficiency of evidence in support of the bill, and a variance between the case set up in the bill and shown by the evidence.

Held, that the motion could not be received unless defendants elected to rest on the objections taken and not to enter upon their defence if the motion failed.

Palmer, Q.C., and Straton, for plaintiffs.

Earle, Q.C., and McLean, for defendants.

TUCK, C. J., }
In Chambers. }

[April 7.

IN RE IRA CORNWALL CO., LTD.

Winding-up Act—Petition in name of firm—Application of Winding-up Act to company formed under Provincial Act.

This was a petition in the name of H. A. Lozier and Co. under the Dominion Winding-up Act, for a winding-up order against the Ira Cornwall Co., Ltd., a company incorporated under the Joint Stock Companies Act of New Brunswick. The petition was signed in the petitioners' firm name, and the affidavit attached to the petition was signed by one E. R. Thomas, who stated that he was a member of the petitioners' firm. For the company it was objected (1) that petition should set out the names of the petitioners' firm as in an ordinary action. By section 21 of c. 32 of 52 Vict. (D.) in amendment of the Winding-up Act, it is provided that all proceedings shall be