

(a) an action for the recovery of land, or an action in which the right or title to any corporeal or incorporeal hereditaments, or any toll, custom or franchise comes in question." This action was for the return of a deposit of \$100, upon the ground that the defendant's title to certain lands was defective owing to a breach of a restrictive building covenant preventing a user of the land by the erection thereon of a building of certain material and character nearer than 15 feet to the street-line. The question which fell to be decided in the Division Court was, whether or not that covenant affected the land, and, if so, whether it had been broken, and whether that breach rendered the title defective.

In view of the difficulty in determining whether such a covenant has ceased to bind the land (*Elliston v. Reacher*, [1908] 2 Ch. 374, 384), it is not advisable that such an action as this should be disposed of in a Division Court; a Division Court is a Court of record (sec. 8); and if, after a decision either way, one of the parties should sue for specific performance or rescission, he would, if jurisdiction existed, be bound by the judgment. And the Division Court had no right to decide whether or not the deposit must be returned, if the decision involved the question of the possession, at the date of the contract or trial, of either a good or a defective title in the defendant.

No evidence was certified to the Court, as required by sec. 127; there is nothing which enables the appellate Court to become seized of the appeal unless sec. 127 has been complied with (see sec. 128, sub-sec. 2). The place of the evidence cannot be taken by a statement of facts agreed upon by the parties, which may or may not have been what the Judge acted on

Appeal allowed and action dismissed; no costs.

NOVEMBER 9TH, 1915.

**REX v. TORONTO R.W. CO.*

Criminal Law — Common Nuisance — Street Railway — Overcrowding of Cars — Criminal Code, secs. 221, 222, 223 — Ontario Railway Act, R.S.O. 1914 ch. 185, secs. 163, 169 — Indictment — Conviction — Punishment — Abatement — "Public Nuisance" — Injury Confined to Passengers — Nuisance Continuing at Time of Indictment.

Case stated by RIDDELL, J., before whom, upon the verdict of a jury, the defendant company was convicted on the 3rd Feb-