buildings. Subsequently the defendant sold the hotel property to the plaintiff, who had lived opposite thereto for some years, the defendant representing, as claimed by the plaintiff, that the division line ran between the buildings, which the defendant denies, whereas it appeared that the hotel encroached some 34 inches on the east half. There was evidence given to show that the plaintiff knew of the encroachment, and stated it made no difference as the matter could be settled; at all events that he knew of it before the deed was executed, when nothing was said about it, the land being described therein as the west half of the lot, according to a plan, and that plaintiff had given a mortgage on the land; that the value of the 34 inches was of trifling amount; that the hotel could be moved on to the proper line for $40; and that the defendant had offered to procure for plaintiff a lease of the piece encroached upon at a nominal rent for the time the hotel would last, which was refused. At the trial it was expressly found that the representation was not false and fraudulent.

Held, under these circumstances there could be no recovery.

At the trial an amendment was made, adding the brother as a party and directing him to make a conveyance to the plaintiff of the piece encroached upon.

Held, that amendment should not under the circumstances have been made, and must be struck out.

Dunbar, (of Guelph,) for the plaintiff.
Meyer, (of Orangeville,) for the defendant.

CHAMBERS.

Mr. Stephens.] [Dec.

WORKMAN v. ROBB.

Appeal—Time—O.J.A., sec. 38—R.S.O., cap. 38, sec. 46.

On the 2nd April, 1881, a decree was pronounced in this cause dismissing the plaintiffs' bill with costs. On the 9th April due notice of appeal was given by the plaintiffs, and about the same time an arrangement was made that the defendants' solicitors should accept the undertaking of the solicitors for the plaintiffs instead of the usual bond to secure the costs of appeal and of the Court below.

On the 8th September the plaintiffs' solicitors wrote to the defendants' solicitors, enclosing their written undertaking.

On the 1st October the defendants' solicitors in answer, wrote, declining to accept the undertaking, stating that he thought the plaintiffs were debarred, by lapse of time, of their right to appeal. Execution was issued on the 10th November against the goods and lands of the plaintiff for the amount of the defendant's taxed costs of suit.

The plaintiff then applied for an order to set aside the execution with costs.

Held, that the agreement between the solicitors applied only to the nature of the security to be given, and not to the time within which it was to be furnished. That section 38 of O.J.A. did not limit to three months the plaintiff's right to appeal within the twelve months which existed under R.S.O., cap. 38, sec. 46.

Executions set aside with costs to be costs to the plaintiff on the final taxation.

Costs in the appeal in any result of the appeal.

Hoyles, for the motion.
Cassels, contra.

Hagarty, C. J.]

REG. EX REL. WATT v. LANG AND CHADWICK.

Municipal Act, sec. 194.

Held, per HAGARTY, C. J., on appeal from Mr. Dalton, that a disclaimer by an Alderman elected in a city is sufficient under the above section, if made within the six weeks from election, although the person elected has acted in his office.

Mr. Dalton.] [Dec. 23, 1881.

CAMPAN v. LUCAS.

Replevin.

The Judicature Act does not in general apply to actions of replevin.

Holman, for application.
Aylesworth, contra.