if the plaintiff had released her dower, and assigned the right of action; but neither of those facts were put in issue by the pleas which had been filed, and therefore the discovery sought by the interrogatories could not affect the case as it stood on the record. On these grounds such interrogatories ought not to be allowed.

Jarvis, in reply. Our object is to get evidence on which to found a plea. The equity on bill can be filed for discovery, and then a bill filed upon that discovery, and by analogy the the interrogatories ought to be allowed in this instance.

BURNS, J.—The summons in the case must be discharged. The interrogatories must be such as will affect the pleas already on the file. The questions are not such as would be allowed to be put at *Nisi Prius*, were issue joined with the pleas already on the file. The proper course, after having already pleaded, would be to get leave to file an additional plea first, and then to ask to be allowed to put interrogatories for the discovery of matter affecting it. In equity a proceeding analogous to this would be called a "fishing bill," and would be disallowed. Some statement must always be made on which to ground a bill of discovery. No doubt before pleas were pleaded interrogatories might be put with a view to framing a defence, without any leave, but when issue has been joined the interrogatories must point to proving something affecting the issue, and if the object be for the purpose of framing an additional defence to that already made, such a case should be made to appear, and that should be the nature of the application. On the present motion the summons must be discharged, but not with costs, as this is the first case of the kind under the Act.

COTTON v. MCKENZIE.

Proceedings having been carried on in a Deputy Clerk's Office, an order of reference on the application of one party can only be to the County Court Judge of the County in which such Deputy Clerk's Office is.

[Oct. 6, 1856.]

This was a case which was altogether a matter of account; and a summons to refer under the 84th section had been obtained by *J. Reid* for the defendant. The order of reference asked was to an arbitrator, or to the Judge of the County Court at Lambton, where the defendant and his witnesses resided—the venue was laid at Leeds.

BURNS, J., (on the summons being moved absolute) held that without the consent of both parties he could not, taking the 84th and 143rd sections together, refer the case to any other person than the Judge of the County Court of the place where the venue had been laid—the proceedings having been carried on in the Deputy Clerk's office of that County.

HANLEY v. HELDERSHOT.

In this case, which was an action of ejectment, service of the writ had been effected on defendant's wife. No appearance was entered, and, under the 34th section, an application was made to enable the plaintiff to proceed as if personal service had been effected, and to sign judgment by default.

BURNS, J., held that 34th section did not apply to actions of ejectment. The 223rd section enacted that service in ejectment should be as heretofore. Service on the defendant's wife was accordingly good, and the plaintiff could proceed to judgment at once, without any order of the Judge.

COUNTY COURTS, U. C.

(In the County Court of the County of Simcoe—J. R. GOWAN, Judge.)

COULTER v. WILLOUGHBY.

[September 27, 1856.]

The Clerk of this Court has been urged to tax the costs in this case according to the tariff settled by the Judges of the Superior Courts under the Common Law Procedure Act, but he has declined doing so without the order of the Judge, and an opinion is asked by which the officer may be guided in the taxation of costs.

It is urged that the tariff under 8th Vic. cap. 13 is superseded by the 18th section of the County Courts Procedure Act—the Judges of the Superior Courts having, by order of Court made in pursuance of the C. L. P. Act, established a tariff of fees; and that this tariff is the only one in existence in the County Courts, and must now govern the taxation of costs in causes therein—that the Judges have no power to make *special* order respecting County Court costs, and that the order contemplated by the 18th section of the County Court Procedure Act, being a *general* one applicable to the Superior Courts, and being the *only* one the Judges could make under the C. L. P. Act, must of necessity apply to County Courts—the Judges, in terms of the Statute, having "otherwise ordered."

The 8th Vic., cap. 13, sec. 75, makes provision for costs in the County Courts, and the Schedule to that Act shews the fees that may be demanded and received. The section referred to has not been repealed, and until the passing of the late Rules the provisions of the 8th Vic. were universally received as the basis and guide in allowance and taxation of costs.

Have the Superior Courts power under the Co. C. Procedure Act to establish a tariff of fees in the County Courts? Have they in the new Rules made order respecting them?—in other words, are the tables of fees established by Rule 170 applicable to the County Courts under the 18th sec. of the Co. C. P. Act? So far as it bears upon the point to be considered, the 18th sec. may be read thus: "Until otherwise ordered by "Rule of Court made in pursuance of the C. L. P. Act," the costs of all proceedings under the Co. C. P. Act "shall be and "remain as nearly as the nature thereof will allow the same as "heretofore, but in no case greater than those already estab-"lished," &c.

In the language used there is a want of pointed expression, which would almost lead one to surmise the madvertent omission of two or three words necessary to confer in direct terms the power of ordering. But from an examination of the context, it is plain to my mind that the authority exists, although this is not expressed with precision. The words "until otherwise ordered," imply the power of ordering otherwise; "until otherwise or-"dered by Rule of Court made in pursuance of the C. L. P. "Act," plainly implies not only that the power of ordering otherwise is vested somewhere, but also that the power must be exercised according to the terms of that Act: to suppose a want of power to make alterations in the present tariff is to render these words meaningless and absurd. The terms "until otherwise ordered" abound in the Statute Book, and in every case carry with them the idea of authority to order otherwise. A person is said to hold office "during Her Majesty's pleasure"; this means, "until Her Majesty be pleased to remove him," and certainly this latter phrase implies the power of removal.

"Rule of Court made in pursuance of the C. L. P. Act": by the 313th sec. of that Act, a Body is constituted with power to make Rules giving effect to the Act, &c., and by the language quoted, that Body is regarded as invested with authority in respect to Costs in the County Courts;—Rules of Court made *in pursuance* of the C.L.P. Act must emanate from that Body.

There was good reason too for conferring such an authority. The Co. C. P. Act so completely altered the procedure that a new table of costs, to suit the altered practice, became a matter of justice and necessity. The Legislature appears to have contemplated that an alteration would be made at a fitting period by the Body referred to, providing in the meantime for services not specified in the Schedule to 8th Vic., by referring to that tariff as affording principles to direct in cases not specially considered.

This provision we may presume, was intended to serve only a temporary purpose, for in the application of general principles