

for a great many years lived, with the plaintiff, and were said to be under his influence. The defendant was advised that so great a difference in the price required explanation, and had made endeavours to see the sisters, but had been refused access to them, and the plaintiff had refused to procure them to join in the conveyance to the defendant.

Held, that under these circumstances, the defendant should be allowed under rule 285, to examine the two sisters before delivering his defence.

It was contended on behalf of the plaintiff that the title could not now be objected to by the defendant, as by the terms of the contract all objections to the title were to be notified by the 26th December, 1887, and this was not taken until a week later.

Held, following *Want v. Stalliteras*, L. R. 8 Ex. 175, that such a condition should not apply to the case of the vendor being unable to give a good title, but only to objections and requisitions which might have been properly enforced against a vendor who had a valid title; and the objection here might go to the root of the plaintiff's title.

Watson, for the plaintiff.

Alan Cassels, for the defendant.

Street, J.]

[Feb. 4, 1888.

EMERSON v. GEARIN.

Counter-claim—Costs—Construction of order.

Although for some purposes a claim and counter-claim form but one action, yet the costs of the counter-claim are to be taxed separately from the costs of the action, a counter-claim being for the purposes of taxation to be treated as a cross action.

McGowan v. Middleton, 11 Q. B. D. 464, and *Reddall v. Maitland*, 17 Chy. D. 174, followed.

And where the order of a Divisional Court varied the judgment at the trial by directing that the counter-claim should be struck out and not dismissed, and should be disposed of in a separate action, and also directed that the defendants should pay into court the amount of the costs of the action, but was silent as to the costs of the counter-claim.

Held, that the rights of the parties must be governed by this order and not by anything

that preceded it, and that under it the plaintiffs were not entitled to take the costs of the counter-claim.

McClive, for the plaintiffs.

H. H. Collier, for the defendants.

Q. B. Divisional Court.]

[Feb. 6, 1888.

In re GRAHAM v. TOMLINSON.

Prohibition—Division Court—Notice disputing jurisdiction—Ascertainment of amount.

The operation of s. 14 of the Division Courts Act, 1880, is restricted to cases within the general jurisdiction of the Division Courts, and the absence of a notice under that section disputing the jurisdiction cannot give jurisdiction when the amount claimed is beyond the competence of a Division Court.

In re Knight v. Medora, 14 A. R. 112, and *In re Mead v. Creary*, 32 C. P. 1, followed.

But where a cheque for \$122 was given to the defendant by the plaintiff as a loan of the money represented by it;

Held, on motion for prohibition, that the indorsement of the signature of the defendant on the cheque was a sufficient ascertainment of the amount of the plaintiff's claim by the signature of the defendant to satisfy s. 54 of R. S. O. c. 47, as amended by s. 2 of 43 Vict. c. 8, and to give a Division Court jurisdiction.

Kinsey v. Roche, 8 P. R. 515, overruled; and *Willis v. Ward*, 8 A. R. 549, and *Forfar v. Clunie*, 10 P. R. 90, considered.

C. C. Robinson, for the plaintiff.

Morson, for the defendant.

Robertson, J.]

[Feb. 6, 1888.

HARTNETT v. CANADA MUTUAL AID ASSOCIATION.

Discovery—Examination of local agent of Life Insurance Company.

In an action upon a life insurance policy, an order was made at the instance of the plaintiff for the examination for discovery only of the local agent of the insurance company who procured the application for insurance.

O'Sullivan, for the plaintiff.

Masten, for the defendants.