PRACTICE.

Mr. Dalton, Q.C.] [March 26.

CANADIAN BANK OF COMMERCE v. MIDDLETON.

Costs, security for—Issue arising out of garnishment proceedings—Interpleader issue.

Where one of the parties to an issue arising out of garnishment proceedings is out of the jurisdiction, there is power under Rule 375 to order security for costs; but

Semble, owing to there being no rule in Ontario similar to the English Rule 863 of 1883, there is no power to make such an order in an interpleader issue.

Belmonte v. *Aynard*, 4 C. P. D. 352, and *Tomlinson* v. *Land and Finance Corporation*, 14 Q. B. D. 539, discussed.

Walter Macdonald, for the plaintiffs.

McMichael, Q.C., for the claimant.

CORRESPONDENCE.

LIMITATION OF ACTIONS.

To the Editor of the CANADA LAW JOURNAL:

DEAR SIR,—Having become familiar with the decisions in the several cases referred to in your able article of the 15th January last, as they were reported, and noticing the conflicting opinions of the Court of Appeal here and in England, I have become interested in the question of "The Limitation of Certain Actions."

Without saying anything as to whether Mr. Justice Gwynne, Chief Justice Wilson and the late Mr. Justice Morrison's judgments, affirmed, as they were, by the Court of Appeal in England, by *Sutton* v. *Sutton*, and *Fearnside* v. *Flint*, or the judgments of our Court of Appeal in *Allen* v. *McTavish* and *Boice* v. *O'Loane*, are right or wrong, I beg with deference, as we are human, and liable to error, to call attention to that part of Mr. McClive's article of March 1st, where he says: "In England a judgment becomes a lien upon the lands of a debtor by a procedure called docketing, which binds the lands of a judgment debtor throughout England, no matter where situate." I have reason to recollect that in England, by 2nd and 3rd Vict. c. 11, which, after reciting that "it is desirable that further protection should be afforded the purchasers against judgments, Crown debts and *lis pendens*," enacted "that no judgment shall hereafter (4th June, 1839—nearly fifty years ago) be docketed under 4th and 5th W. & M. c. 20; but that all such dockets shall be finally closed immediately after passing of this Act (4th June, 1839), without prejudice to the operation of any judgment already docketed and entered under the said recited Act. No doubt under 4th and 5th W. & M. the docketing of a judgment did bind the lands of a debtor throughout England until the effect of docketing was (in the language of the late Sir John Robinson, in *Doe dem. Dougall* v. *Fanning*, 8 Q. B. 166, *Doe Dempsey* v. *Boulton*, 9 Q. B. 532) "done away with by the Imperial Act., and registration of judgment substituted." It will be well remembered by Chief Justice Wilson, Mr. Justice Gwynne, and other judges, that in this Province no judgment could be entered without a "docket paper," from which, as soon as the judgment was signed, it was docketed in a book kept solely for the purpose, as early as, and even before *Doe d. Auldjo* v. *Hollister*, 5 O. S. 739, by which our courts held that "lands are bound only from the delivery of the writ against them to the sheriff, and a judgment is no lien upon them." Yet strange as it may appear, although in England the effect of docketing was by 2nd Vict. discontinued and registration substituted, docketing in England continued until, by Imperial Act, 12th Vict. c. 110, it was, as well in form as effect, abolished, and docketing continued in force here (without the effect it had in England up to 1839) until our Act, 9th Vict. c. 34, s. 36, as amended by several subsequent Acts, provided for judgments binding lands by registration.

What has probably misled Mr. McClive is the recital in our repealed Act, 9th Vic.: that the registration of a judgment "Shall affect and bind all lands belonging to the defendant from the time of registration, in like manner as the docketing of judgment in England affects and binds lands." At the time of passing of which Act here, the docketing of judgments so as to affect lands in England had ceased. Chief Justice Sir John Robinson, in another case—*Doe dem. Dempsey* v. *Boulton*, 9 Q. B. 532, showed clearly that the words quoted should be read to mean, as the judgment docketed in England (when docketing was required) *used* to