Falconbridge, C.J.] [June 5.

NEW HAMBURG MANUFACTURING CO. *v.* BARDEN.

County Court appeal—Order dismissing motion to commit—Finality.

An appeal by the plaintiffs from an order of the Judge of the County Court of Waterloo in Chambers in an action in that Court dismissing a motion by the appellants to commit the defendant Barden for refusing to be sworn and examined as a judgment debtor upon the ground that a proper foundation had not been laid for his examination by a return of nulla bona to a fi. fa., or an affidavit stating that such would be the return.

W. M. Douglas, K.C., for the defendant Barden, objected that no appeal lay, because the order appealed against was not in its nature final, but merely interlocutory, within the meaning of s. 52 of the County Courts Act, R.S.O., c. 55; citing *Gallagher* v. *Gallagher*, 31 O.R. 172, and *O'Donnell* v. Guinane, 28 O.R. 389, and pointing out that in *Baby* v. *Ross*, 14 P.R. 440, the remarks at p. 443 shewed that such an order as this should be regarded as merely interlocutory, although an order to commit would be final.

Du Vernet in answer to the objection relied on the decision in *Baby* v. *Ross* as in his favour.

Held that the order was clearly not in its nature final, and quashed the appeal with costs.

Falconbridge, C. J., Street, J.] [June 7.

MCLAUGHLIN v. LAKE ERIE AND DETROIT RIVER R.W. CO.

Pleading—Reply—Departure—Contract—Repudiation—Reformation.

An appeal by the defendants from an order of MEREDITH, C.J., in Chambers, reversing an order of the Master in Chambers striking out the reply.

Shortly stated, the pleadings were as follows: The plaintiffs said they supplied the defendants, under an agreement, with patent brakes for use on their railway, and that the defendants altered them and infringed their patent. The defendants said that they had a right under their agreement with the plaintiffs to do what they had done. The plaintiffs, by their reply, denied any such agreement, and alleged that if the written agreement did give any such right, it was not the true agreement, and they asked to have it reformed.

Held, that there was no departure in the reply; for the fact that, by mutual mistake, the written agreement did not set forth the true agreement between the parties in this particular respect was a perfectly good answer to the plea of the agreement, and it was not necessary that the agreement should be actually corrected before the mistake could operate as an answer to its terms: *Breslauer* v. *Barwick*, 36 L.T. 52; Bullen & Leake, 5th ed., 788-9; *Hall* v. *Eve*, 4 Ch. D. 341.

Held, also, that, even if the portion of the agreement upon which the