

C. L. Cham.]

METROPOLITAN BUILDING & SAVINGS SOCIETY V. RODDEN.

[Ontario.

the fight, and all the badgering after it, which the candidate undergoes in a popular constituency.

The late judge was a man of singularly attractive character. He was, in truth, a gentleman in all the senses of the word; in birth and education, in manner, and, above all, in heart; he was a genial companion; simple as a child, courteous and unaffected with all; how warm-hearted, how generous and sympathetic, how chivalrous and unselfish, can be known only to those who were most intimate with him. And he had one of those admirable tempers which throws a charm over all who come within its influence; calm to bear all the rubs of life with equanimity, though not cold enough to stifle the indignation of an honest nature at the sight of fraud or villainy, or to conceal disdain for brass when passing in triumphant circulation for a more precious metal. Such qualities won him no ordinary degree of affection.

In his family, and in the inner circle of his most intimate friends he was loved with well deserved devotion. Few men have enjoyed so wide a popularity at the Bar; among the young, for whom he always had a kindly word, as well as among his own contemporaries; and he had many touching marks during his illness of the esteem and regard in which he was held on the Bench. By his death the country lost an eminent lawyer, and the profession a conspicuous ornament; and both in the profession and out of it many a tear has fallen in secret on that grave which closed, not two months since, over one of the best and most loveable of human beings.—*Law Magazine*.

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

METROPOLITAN BUILDING AND SAVINGS SOCIETY V. RODDEN.

Ejectment—Defence for time—Striking out.

Ejectment on mortgage. Defendant appeared; but on examination under A. J. Act, 1873, he admitted the execution of the mortgage, and that the defence was merely for time. *Held*, that the appearance and defence could not be struck out on the authority of *McMaster v. Beattie*, 10 C. L. J. 103, as defendant was entitled to possession until plaintiff should prove his case.

[January 8, 1876—MR. DALTON.]

In this case, title was claimed by the plaintiff by virtue of a mortgage, in the proviso for redemption of which default had been made. The defendant appeared, and defended for the whole of the lands claimed. He was subsequently examined under the Administration of Justice Act, when he admitted his execution of the mortgage and default in payment, and stated that he had no *bond fide* defence against the plaintiffs, and had only defended the action in order to gain time, and to enable certain other parties to realize their claims on the lands.

Application was thereupon made in Chambers to strike out the defendant's appearance and notice of defence, on the ground that this was a case in which the same principle would apply as in *McMaster v. Beattie*, 10 C. L. J. 103, and subsequent cases, where pleas pleaded merely for time, and admitted in a proceeding in the cause to be false in fact, were struck out, and leave given to enter final judgment.

MR. DALTON.—I do not think I have power to grant anything which would assist the plaintiffs in the present case. It is true that similar applications have been granted occasionally, and probably no injustice has as yet been done in this way, but my opinion is that I have no jurisdiction in this matter. An equitable defence in ejectment might be struck out if proved to be false or embarrassing, but a defendant who appears has a right to remain in possession until the plaintiff proves his title, and his admissions under examination do not deprive him of this right.