

Div. Ct.]

BROWN V. BINKLEY—LAW STUDENT'S DEPARTMENT.

because the point in question arose under the Administration of Justice Act, which was not extended to the Division Courts, whereas the Judicature Act is, in express terms, applied, as far as practicable, to the courts of inferior jurisdiction.

But I go further than either of the learned judges.

By section 77 of the O. J. A. it is enacted that every " . . . Division Court shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and *shall grant* in any proceeding before such Court, such *relief, redress, or remedy* . . . in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice." Section 80 extends to *all* courts the rules of law enacted and declared by the same Act. I think the preventing a defendant who has no real defence from using the process of the court to delay a plaintiff in obtaining speedy judgment, is a *relief* to which the latter is entitled, the striking out the dispute note is a *redress*, and the order to enter judgment for the plaintiff forthwith is a *remedy*, all within the spirit, if not the letter, of the Act.

*Order accordingly.*

## SECOND DIVISION COURT, COUNTY OF WENTWORTH.

IN THE MATTER OF BROWN, (Appellant), AND BINKLEY, (Respondent).

*Appeal under sect. 50 of the Division Court Act, 1880.*

[Hamilton, May 16.

On the complaint before a Justice of the Peace, of the respondent (the master) against the appellant (the servant) for non-fulfillment of an agreement to work for the master for seven months at \$14.00 per month. The servant refused to carry out his agreement, and the master was compelled to hire another man, paying him \$16.00 per month. The Justice ordered the servant to pay the master \$14.00 damages, or in default to be committed to gaol for 30 days at hard labour.

*Wyld*, for appellant.

WALKER, Deputy Judge.—After a perusal of the various statutes to which I was referred I can have no doubt as to the judgment which I should give on the appeal. I think the con-

victing magistrate has completely misinterpreted his powers in the matter of this complaint. On the complaint of a master for a breach of contract by the appellant for refusing to carry out an agreement to work, the Justice has, by his conviction, ordered the servant to pay to the complainant \$14.00 and costs, and in default to be committed to gaol at hard labour. Assuming that the Con. Stat. U. C. chap. 75, had not been affected by subsequent legislation, the Justice had not power under its provisions to order a payment by the servant to the master, he could only inflict a fine, and the statute provides that the fine should be paid to a public officer and not to the complainant. But the power of the Justice even to inflict a fine has been taken away by the statute 40 Vict. Cap. 35, and on referring to the Revd. Stat. Ont. Cap. 133, we find the power of the Justice is limited to complaints made by the servant against the master, the master being left to his ordinary civil remedy against the servant. If the Justice intended to act under the latter statute (and I presume he did, as the matter was argued before me as if he had, without objection) then the conviction is bad in ordering, in default, the appellant to be committed at hard labour. It has been held that it is *ultra vires* of the Local Legislature to give this power to Justices of the Peace. In my opinion the Justice of the Peace, in making the conviction now before me, was acting entirely without jurisdiction. I allow the appeal of the appellant with costs, which I order and direct to be paid by the respondent to the appellant, and I also order that the said conviction be and the same is hereby quashed.

## LAW STUDENT'S DEPARTMENT.

The Benchers in Convocation assembled have appointed the Trinity Term of the Law Society to begin on the third day of September next. The examinations will take place as usual during the three weeks preceding that date.

An embarrassed young lawyer with his first cause appeared before a Washington judge the other day, with his umbrella under his arm, and, in his agitation, kept his hat on. He began his remarks, when the judge kindly said, "Had'n't you better raise your umbrella?" As an ex-change says, this would have been a considerate suggestion if mercy really "drop, like the gentle dew, from heaven."