pp, 525, 643, 644; *Reg.* v. *Austin*, 25 L. J., M. C. 48; Indictable Offences Act, 32-33 Vic. cap. 30, sec. 30, Can., applies only to depositions taken on a preliminary investigation in a criminal matter. The appeal here was an entirely new proceeding, and the prosecutor had to begin *de novo*: Dickenson, 643, 644.

The appeal was governed by the Statute of Ontario, not by the Summary Conviction Act of Canada, 32, 33 Vic. cap. 31, for the subject of it was not a crime under sec. 1, and it was in relation to a matter wholly within the jurisdiction of the Provincial Legislature: B. N. A. Act, sec. 92, sub-sec. 9.

Galt, J. (having consulted Hagarty, C J., C. P.)—There is no doubt that the whole of the proceedings of the Sessions were entirely irregular; but I see a difficulty in granting a prohibition. How is the appeal to be disposed of? If we could grant a conditional prohibition until the next Sessions we might relieve the appellant, but it cannot be disputed that there was jurisdiction to *entertain the appeal.* Are then the facts, that a jury was sworn to try the appeal, and that improper evidence was received, reason for granting a writ of prohibition? I think not. The judge might accept the verdict of the jury, and make it the judgment of the court. I do not think that the other ground taken by the summons, that the Sessions proceeded without evidence, can be put higher than the admission of improper evidence, and this is no ground for a prohibition.

The summons must be discharged, but under the circumstances without costs.

Summons discharged without costs.

Nordheimer v. Shaw.

31 Vic., Cap. 12, Sec. 12.—Computation of time.

[Chambers, Jan. 4, 1872. *Mr. Dalton—Galt, J.*]

Ejectment. The defendant appeared to the writ, and defended for all the land claimed, on the 27th December, in the name of a Toronto attorney, and the next day the served issue book and notice of trial, &c. On the evening of the 29th December, the defendant served on the plaintiff's attorney an order substituting a country attorney in lieu of the former attorney, and with it a notice limiting his defence to part of the land claimed. The question then arose as to the meaning of the words "two clear additional days to the time now allowed by law for such service shall be added," given in the 34 Vic., cap. 12, sec. 12, when the attorney for whom papers are served on an agent resides in the country.

Mr. Dalton.—Service of notice of trial on Monday for Monday is good, and this makes six clear days. Service on Saturday for Monday week following would be eight clear days, thus making two clear days additional, and it is this which the statute means. The two days are to be added to the number of days required, between the day of service and the day for performance of the Act.

The plaintiff appealed from the above judgment, but it was upheld by Mr. Justice Galt.

CHANCERY CHAMBERS.

Meyers *v.* Meyers.
Harris *v.* Meyers.
Turley *v.* Meyers.

(Reported for the Canada Law Journal by T. Langton, M.A. *Student-at-Law.)*

Sequestration—Abatement of Suit—Effect of upon Sequestration—Form of application to set aside writ of Sequestration on ground of priority of applicant—Practice—Rights of lessees under Sequestration.

After decree for payment of money, the Plaintiff issued a writ of sequestration, under which the Sheriff, as Sequestrator, took possession of certain lands of Defendant. Defendant afterwards died, as it was supposed, intestate and the Plaintiff revived the suit against his heir. Subsequently, a will was discovered whereby defendant devised his estate to one Cross. Upon motion to set aside the writ of Sequestration for irregularity on the ground that the suit was not properly revived. *Held*, not an irregularity, but if revivor improper, time would be given to revive properly.

The application to set aside the writ was also based on the ground that the claims of the applicants and others as creditors of the defendant were prior to that of the plaintiff. *Held*, that even if such priority had been established the application to set aside the writ could not be made in Chambers, but that parties claiming priority must proceed under Order 398.

The Sequestrator had, under the authority of the Court, leased portions of the sequestered lands under leases which stipulated that in the event of the Writ of Sequestration being discharged by payment of the amount due or otherwise during the term created, the lessees should be entitled to six months' notice before giving up possession. *Held*, that even if writ irregular, the tenants were entitled to the notice.

[Chambers, ——— 1872. *Mr. Taylor.*]

The facts appearing on this application were shortly the following: Harris filed a bill against E. W. Meyers for redemption, and, on an account being taken, E. W. Meyers appeared to have received a large amount from rents and profits over and above his mortgage debt this E. W. Meyers was directed to pay, and a writ of Sequestration was issued to enforce the decree. E. W. Meyers died, as it was supposed, intestate, and the suit was revived against his heirs. Harris then assigned his interest under the decree to Turley, which occasioned a second revivor of suit as *Turley* v. *Meyers*. E. W. Meyers had, however, left a will by which he devised all his estate to one Cross upon certain trusts. Two questions were then raised: 1st It being doubted that Turley was the *absolute* assignee of Harris, whether he ought not to revive, making the Harris estate a party, and 2nd, whether the suit was not improperly revived against the heirs of E. W. Meyers, and ought not to be again revived against his executors. Subsequently the beneficiaries under the will commenced a suit against Cross and one Meyers for administration of the estate of E. W. Meyers in which a decree for administration was made, and the suit was consolidated with *Turley* v. *Meyers*. Turley proved his claim against the estate of E. W. Meyers in the Master's office, but the priorities of the several creditors had not been settled by the Master, but it was claimed by the applicants that there were creditors whose claims were prior to the sequestration.

Bain moved to set aside the writs of sequestration issued in *Harris* v. *Meyers* on the following grounds: