

Allen, that the persons named and others were in the habit of attending the First Division Court of the County of York, and acting as advocates contrary to law, in prosecuting and defending cases, examining witnesses, &c., to the injury of members of the Bar and attorneys, and to the detriment of the general public: that he, Mr. Allen, frequently objected to such unprofessional persons being so engaged: that the same was brought under the notice of the said judge and junior judge, accompanied by a memorial numerously signed by both branches of the profession in the City of Toronto, praying that such unprofessional persons should not be recognised or permitted to act as advocates in the Division Courts, but without effect; and that the persons named in the rule would continue to act as such advocates unless prevented by judicial authority.

During last term, *C S Patterson* shewed cause, taking several preliminary objections to the form of the application and the grounds of the motion, and Mr. Allen supported his rule.

MORRISON, J. — We do not think it necessary, in this case, to consider the preliminary objections, as the object of this application was to obtain the opinion of the Court upon the right of persons, not being barristers or attorneys, to practice in the Division Courts, in the prosecution and defending of suits. Mr. Patterson referred us to several sections of the Division Courts Act, Con. Stat. U. C. cap. 19, as indicating that unprofessional persons were not prevented from conducting causes in those courts. We find that in the 84th sec. it is enacted "On the day named in the summons, the defendant shall in person or by some person on his behalf, appear in the court to answer; and on answer being made, the Judge shall without further pleading or formal joinder of issue, proceed in a summary way to try the cause," and in the 106th section it is stated, "The judge in any case heard before him, shall openly in Court, and as soon as may be after the hearing, pronounce his decision; but if he is not prepared to pronounce a decision *instantly*, he may postpone judgment and name a subsequent day and hour for the delivery thereof in writing, at the clerk's office, and the clerk shall then read the decision to the parties or their agents, if present," and by the 109th section "The Judge may in any case, with the consent of both parties to the suit, or of their agents, refer the matters in dispute to arbitration;" and in section 114 it is provided that "in cases where the plaintiff does not appear in person or by some person on his behalf, &c., the Judge may award costs to the defendant, &c.;" and by section 139 "the clerk shall, upon application of the plaintiff or defendant (or his agent) having an unsatisfied judgment in his favor, prepare a transcript of such judgment, and shall send the same to the clerk of any other Division Court, &c." These are the only sections of the Act which contain any expressions referring to agents or persons acting on the behalf of suitors.

Now, with reference to sections 106 and 139, I see no reason from the very nature of these provisions, that the person who may attend in the one case or makes the request in the other, need be a barrister or an attorney; but with respect to the other sections, they appear to me to have relation to persons who are duly authorised to practice as barristers and attorneys in her Majesty's

Courts; particularly when we come to consider the provisions of the statute respecting barristers-at-law, Con. Stat. U. C., cap. 34, and that respecting attorneys-at-law, in cap. 33 of the same statutes—the former passed many years before the Division Courts Act, and the latter several years after. It seems to me clear that no persons can solicit or defend any action or suit in a Division Court, other than barristers or attorneys duly qualified. The first section of the Act respecting barristers, enacts that only certain persons and no others may be admitted to practice at the Bar in His Majesty's Courts of Law and Equity in Upper Canada.

The effect of this statute was much discussed in the case of *In re Lapenotiere*, 4 U.C.Q.B. 492; the question in that case being whether an attorney was entitled to be heard as an advocate in the then District Courts, which had not a jurisdiction as extensive as the the Division Courts—and the majority of the judges of the court held that attorneys could not be heard, by reason of the Stat. 37 Geo. 3, cap. 13, which is consolidated by cap. 34. Macaulay, J., in giving judgment, says, "The statute enacted that no person (subject to certain exceptions, not including attorneys) should be permitted to practice at the bar of any of his Majesty's courts, &c. It does not appear to me that an attorney, not a barrister, can, as of right, claim to be heard as an advocate in the District Courts in the face of this express prohibition, if such Courts come within the denomination of 'any of his Majesty's courts in this Province.' All courts of record are the King's Courts, and the statute 8 Vic. cap. 18, in creating the District Courts, establishes them as courts of law and record; and sec. 48 empowers them to fine and imprison."

Now by 32 Vic. cap. 23, (Statute of Ontario,) all judgments in the Division Courts shall have the same force and effect as judgments of Courts of Record, which is in other words constituting them Courts of Record; and they have, by section 182, power to fine and imprison. But when we come to look at the act respecting attorneys, passed several years after the passing of the Division Courts Act, the language of that statute is so clear, that there is little room to doubt the intention of the Legislature, as expressed in the first section, which enacts "Unless admitted and enrolled and duly qualified to act as an attorney or solicitor, no person shall, in Upper Canada, act as an attorney or solicitor in any superior or inferior court of civil or criminal jurisdiction in law or equity, or any court of bankruptcy or insolvency, or before any justice of the Peace, or as such sue out any writ or process, or commence, carry on, solicit or defend any action, suit or proceeding in the name of any other person or in his own name." These words are as large and wide as they possibly can be made; and, as indicating the comprehensiveness of the intention of the Legislature, unprofessional persons are prohibited from soliciting or defending any proceeding, before a Justice of the Peace.

It has been suggested that as there are no pleadings in the Division Court, there was no necessity for the services of a professional gentleman, and that any person might act for another in cases in those courts. The same observations might be applied to proceedings