

REPORTS.

ONTARIO.

CHANCERY DIVISION.

(Reported for the LAW JOURNAL.)

GRANT V. GRANT.

Administration—Partition—Time for granting.

An order for the administration of an estate of a deceased person was refused on the ground that twelve months had not elapsed from the death of the deceased, and no special circumstances were shown, although the administrator was one of the applicants.

An order for partition of the realty was also refused when the application was made within six months of the death of the person whose estate was sought to be partitioned. The Rule laid down by the Partition Act, R. S. O. c. 101, s. 6, held applicable.

(February 15.—Boyd, C.)

T. S. Plumb moved on notice under Orders 638 and 640 for administration and partition or sale of certain property in the County of Haldimand.

Isaac Campbell, for the infants, consented to the order going.

H. Symons, for an adult defendant, objected (1) that administration could not be obtained within a year from the death of the intestate; (2) that partition could not be obtained till after six months from the date of the decease; (3) that the application should have been made to the local Master, the lands being all in one county, and no special cause being shown. He referred to *Re Slater*, 3 Chy. Ch. R. 1; *Vivian v. Westbrook*, 19 Gr. 461, R. S. O. c. 101, s. 6; *Barry v. Barry*, 19 Gr. 458.

Judgment reserved.

THE CHANCELLOR—An administration, and partition, or sale, are sought by the administrator and some of the next of kin and heirs-at-law of an intestate. No special reason is given for applying within six months of the death. It is clearly too soon to apply for administration under *Slater v. Slater*, 3 Chy. Ch. R. 1, and I think the analogy of the Partition Act, (R. S. O. c. 101, s. 6,) limiting six months from the death may very well apply to this case, see *Bennett v. Bennett*, 8 Gr. 446. The policy of the statute should apply to all partition matters regarding the lands of a person deceased whether

testate or intestate. I refuse the application with costs.

(See *Rowse v. Morris*, L.R. 17 Eq. 20—Rep.)

CHAMBERLAIN V. ARMSTRONG.

Mortgage suit—Rules 45, 78—Judgment by default in action commenced in local office.

When an action is commenced in a local office, judgment for default of appearance, or pleading, must be entered in the local office.

An action for foreclosure, sale or redemption of mortgaged property is not within Rule 45, and no order allowing service is necessary, and on default of appearance judgment may be entered on præcipe, according to the former practice in Chancery.

(February 15.—Boyd, C.)

This was an action for foreclosure of a mortgage. The writ had issued from the office of the Deputy Registrar at London.

Two of the defendants had been served with the writ of summons out of the jurisdiction, and an order had been made by the Master in Chambers simply allowing service. The defendants had not appeared. On applying to the Registrar to enter judgment he had refused to do so in the absence of an order as to the manner of proceeding in the action, and as to the mode in which plaintiff was to prove his claim as provided by Rule 45 (*e.*) And because the writ having been issued from a local office a judgment for default of appearance or defence must be entered in the local office.

H. Cassels, for plaintiff, now applied *ex parte* for a direction to the Registrar to enter the judgment, or for an order authorizing the entry of judgment on præcipe. He contended that the clause in Rule 45 (*e.*) commencing "and if the defendant does not appear, etc.," only applied to cases where the action is one not coming within the clauses *a*, *b* and *c*, and that no order to proceed was necessary.

THE CHANCELLOR—Without pronouncing any opinion as to the proper construction of Rule 45, I think this being a mortgage case it is governed by Rule 78, and as under the former practice the plaintiff would have been entitled to judgment on præcipe without an order, he is entitled to it now.

On conferring with PRÓUDFOOT, J., however, we concur in thinking that it is better to confine actions commenced in outer offices to the local offices. It will be known there if appearance is