

should be construed, would introduce anomalies not intended to be introduced. If that contention is correct, the words, "and such action may be brought in the Division Court in which the cause of action arose," are quite unnecessary. The enactment was not intended to apply to a garnishing plaint at all, or else it is not to be construed in the manner intended for by the primary creditor.

Order for prohibition with costs.

Practice.

MEREDITH, C.J.]

[May 4.

ROBERTS v. DONOVAN.

Attachment—Contempt of court—Discharge—58 Vict., c. 13, s. 29—Terms.

After the enactment of s. 29 of 58 Vict., c. 13, which was assented to on April 16th, 1895, and after the defendant had been nearly five months in gaol under an attachment issued pursuant to an order committing him for contempt of court in disobedience of a judgment requiring him to cause a certain mortgage to be discharged, an order was made for his release upon the terms of his consenting to a judgment against him for the sum required to pay off the mortgage and all costs for which he was liable to the plaintiff, and upon his undertaking not to bring any action against any one on account of his arrest and imprisonment, such order to be without prejudice to any proceeding or the right of the plaintiff against any other person.

J. W. McCullough for the defendant, J. A. Donovan.

Moss, Q.C., for the plaintiff.

THIRD DIVISION COURT OF THE COUNTY OF PERTH.

WOODS, CO.J.]

[April.

KENT v. SUTHERLAND.

Promissory note—Bills of Exchange Act, 1890—Need of presentation of promissory note before action.

This was an action on a promissory note for \$46.40, dated January 27th, 1892, and payable at the Bank of Toronto, London.

Geo. McNab for the plaintiff.

Moscrip for the defendant.

WOODS, CO.J.: There is a point which was not raised at the trial, that is, as to the meaning of the Bills of Exchange Act, 1890, s. 86. There is room to argue that the maker is not liable until presentment has been made at the particular place where the note is made payable, that is, in this case the Bank of Toronto, London. Presentment was not proved (see last sentence of the first clause of s. 86 of the Bills of Exchange Act, 1890). Then, again, it may be contended that it is only a question of costs, as indicated in the third sentence in said first clause.

Until 1890 the matter both as to bills and notes was governed in this country for many years by R.S.C., c. 123, s. 16, taken from the old Con. Stat.