

up that the proceedings under the expired writ constituted a payment of the execution debt.

Bank of Upper Canada v. Murphy, 7 U. C. R. 328, distinguished. *Daby v. Gehl*, 132.

3. *Prohibition—Substitutional service of summons—Defendant out of Ontario—R. S. O. ch. 51, sec. 100.*—At the time of the issue of the summons in a Division Court plaint the defendant was in Ontario, but she left without its having been served upon her, and an order was made after she had left for substitutional service.

In the material upon which she supported a motion for prohibition she did not negative the existence of such facts as would give jurisdiction to make an order for substitutional service, and from her own affidavit it was to be inferred that the summons had come to her knowledge:—

Held, that the Judge in the Division Court had jurisdiction under sec. 100 of R. S. O. ch. 51, as amended by 51 Vic. ch. 10, sec. 1 (O.), to order substitutional service if certain facts were made to appear, and as the defendant was subject to the summons at the time it was issued, it was for the Judge to determine whether the facts necessary to give jurisdiction appeared, and his determination could not be reviewed by the High Court. *Re Hibbitt v. Schillbroth: Woods et al, Garnishees*, 299.

DIVISIONAL COURT.

See CRIMINAL LAW, 1.

DONATIO MORTIS CAUSA.

See GIFT.

DOMICILE.

Evidence of.—*Held*, upon the facts set out in the judgment in this case that although a testator's original domicile was in Ontario, he had changed it to the United States, which was his domicile at the time of his death, and his will therefore must be construed according to the laws of Minnesota, U.S., so far as regards all his personal estate, and his real estate there; according to the laws of Manitoba as regards his lands there; and as to his Ontario lands they devolved on his executors. *McConnell v. McConnell*, 36.

DOWER.

Bar of.—*See HIRING*, 1.

Election.—*See WILL*, 11.

DRAINAGE.

See MUNICIPAL CORPORATIONS, 8, 9.

DURESS.

See HUSBAND AND WIFE, 1.

DYING DECLARATION.

See CRIMINAL LAW, 2.

ELECTION.

See WILL, 11.

ESTOPPEL.

See DIVISION COURTS, 2—*INSURANCE*, 1—*LANDLORD AND TENANT*, 1—*PUBLIC SCHOOLS*, 3.