of the rules of law, he has failed to make out his case to the satisfaction of the judge, and has, in consequence thereof, been nonsuited.

In view of these conclusions I cannot give effect to the defendant's objection that the former nonsuit is a bar to this action.

IN THE FIRST DIVISION COURT, COUNTY OF ONTARIO.

SMITH v. LAWLER.

Division Court—Rule 80, O. J. A.

Rule 80 of the O, J. A. extends to the Division Courts, and the plaintiff is entitled to speedy judgment where it is shown to the satisfaction of the judge that there is no real defence. *Willing* v. *Elliott*, 37 U. C. R. 320; *Burk* v. *Britain*, 19 C. L. J. 74; and *Cowan* v. *McQuade*, 19 C. L. J. 108, commented upon.

[Whitby, April 14.—DARTNELL, J.J.

This was an application made to the Junior Judge of the County of Ontario, for an order under Rule 80 of the Judicature Act, to strike out the dispute note, and direct judgment to be entered forthwith for the plaintiff.

DARTNELL, J.J.—The facts, as disclosed by the affidavits filed, are quite sufficient to justify the granting of the order asked, provided Rule 80 of the O J. A. applies to the Division Courts. I have already ruled in several cases that it does, but, since such rulings, two of my brother County Court Judges have given well considered judgments in similar cases, in which, unfortunately, they have arrived at opposite conclusions. It is to be hoped that, at an early date, an appeal may be had in some like case, so that uniformity of practice may prevail throughout the Province upon so important a point.

My brother Clark, of Northumberland and Durham, in a case of *Burk* v. *Britain*, reported in 19 C. L. J. 74, conceived it his duty to order judgment for the plaintiff, without a trial. He points out "that the spirit of legislation has been for many years past in the direction of sweeping away dilatory defences;" that "the legislature has, from time to time, acknowledged the injustice of permitting debtors, by making a sham defence, to delay their creditors in recovering the amount due;" that "a formal defence ought not to be allowed to hinder a plaintiff if he could show, before the regular time of hearing, that there was no real defence;" and finally, that, in a certain class of cases, "the defendant has to convince the court that he ought to be allowed to defend, or judgment goes against him." The learned judge was of the opinion that the "presenting an untrue plea being, even temporarily, an obstacle to the recovery of a just debt, is an illustration of the principle." In this I thoroughly agree with him, and, acting under the discretion which is conferred by the 244th (or last) section of the Division Courts Act, I conceive he had authority to order the entry of judgment forthwith for the plaintiff, which he did.

My brother Dean, of Victoria, in the case of *Cowan* v. *McQuade*, 19 C. L. J. 108, has arrived at an opposite conclusion, deeming that it would not be "a wise or just exercise of the discretion allowed by sect. 244 to introduce this practice." His argument is based both on the ground of inconvenience, and because no provision is made for costs. As to the ground of inconvenience, it is not greater than in other applications necessarily made to the judge at the County town—such as motions for rehearings, orders for substitutional service, change of venue, and many others which will occur to the practitioner. As to the want of provision for costs, that can be easily remedied by a rule to be framed by our Board of County Judges. It seems to me that if it became generally known that a defence merely for time is unavailing, that these defences would rapidly diminish. It is beyond controversy that this is the case in the Superior and County Courts. I submit that it would be inequitable or unfair that a plaintiff, holding a note for say $199, to which there is no defence, should be in a worse position than one who has a similar right of action for a sum over $200. In the latter case he would have the right to judgment in a brief space of time; in the former the fact of filing a dispute note might preclude him from obtaining judgment perhaps for several months. I have known cases wherein a plaintiff, in order to obtain speedy judgment, has, at the risk of costs, brought his action in the County Court. For these reasons I think, on the question of discretion alone, that I should follow the *dictum* of my brother Clark rather than arrive at the conclusion of my brother Dean.

The case of *Willing* v. *Elliott*, 37 U. C. R. 320, is distinguishable from this class of cases,