payable to the clerk upon "every notice required to be given by the clerk to any party to a cause or proceeding, and mailing."

By s. 54 of the Act, the clerk is entitled to his fees before being required to take any proceeding.

Where, therefore, the defendants wrote a letter to the clerk of the Division Court in which they were sued, disputing the jurisdiction, but did not accompany it by the necessary fees, and the clerk took no notice of it;

Held, that there was no notice disputing the jurisdiction, and prohibition could not be granted.

Langton, Q.C., for the plaintiff.

W. H. P. Clement for the defendants.

Chancery Division.

Div'l Court.] [Jan. 22.

MISENER *v.* THE MICHIGAN CENTRAL RAILWAY CO.

Railways—Railway frogs—Filling with packing—Keeping same filled—51 Vict., c. 29, s. 262, s-s. 3 (D.).

It is the duty of a railway company under s-s. 3 of s. 262, 51 Vict., (D.), not only to fill with packing the spaces behind and in front of every railway frog, but to keep the same filled.

In an action by a widow and administratrix of a railway employee, who had been run over by a train and killed by reason of his foot being caught in a frog, which had been filled, but the packing had worn away, in which action the railway company contended that having once filled the frog they were not bound to keep it filled;

Held, that the plaintiff was entitled to recover.

German for the plaintiff.

Saunders for the defendants.

FERGUSON, J.] [Jan. 26.

PIERCE *v.* THE CANADA PERMANENT LOAN & SAVINGS CO. ET AL.

Mortgage—Priorities—Registry Act—Building loan—Further advances.

One Wilson entered into an agreement for the purchase of certain lands, which provided that $2000 of the purchase money was to be secured by a mortgage on the land, which was to be subsequent to a building loan not exceeding $12,000. The plaintiff succeeded to the rights of the vendor under the above agreement. After the agreement Wilson executed the mortgage to a loan company for $11,500, to be advanced, as the building progressed, in the manner of a building loan. The company at once registered its mortgage, and advanced a certain portion of the $11,500 to remove prior encumbrances. The mortgage for $11,500 contained a clause that neither the execution nor the registration of it, nor the advance of part of the money, should bind the mort-