vention of a jury, I am of opinion, that had the case been properly brought before the County Court, such an objection could not be sustained. This is a very important question, and, as this is, I believe, the first occasion on which the construction of the Law Reform Act, as regards this point, has been brought up, I have thought it expedient to state my reasons. The first sub-section of the 17th section of the Law Reform Act enacts, that all issues of facts and assessments of damages in the Superior Courts of Common Law relating to debt, covenant and contract, when the amount is liquidated or ascertained by the signature of the defendant, may be tried and assessed in the County Court of the county where the venue is laid, if the plaintiff desire it, unless a judge of such Superior Court shall otherwise order. The second sub-section is, "All issues of fact and assessments of damages in actions in any County Court, may be tried and assessed at the election of the plaintiff at any sittings of Assize and Nisi Prius for the county in which the venue is laid, without any order for that purpose. The other sub-section of section 17, has no bearing on the present question. Section 18 is as follows: in amendment of the second section of ch. 31, of the Consolidated Statutes of Upper Canada, entitled "an Act respecting Jurors and Juries," which said second section enacts, that issues of fact shall be tried by a jury, unless otherwise provided, it is enacted, 1st, that all issues of fact in any civil action when brought in either of the Superior Courts of Common Law, or in any of the County Courts of Ontario, and every assessment or enquiry of damages in every such action may, and in the absence of such notice as in the next sub-section mentioned, shall be heard, tried and assessed by a judge of the said courts without the intervention of a jury, provided that if any one or more of the parties requires such issue to be tried or damages to be assessed or enquired of by a jury, he shall give notice to the court in which such action is pending, and to the opposite party that he requires a jury. It was contended on behalf of the defendant in the present case, that the foregoing provisions of the first sub-section, apply only to cases in which the judge presiding at the trial is a judge of the court in which the action is brought, or at any-rate that no County Court judge could decide any issue of fact in a case brought in one of the Superior Courts without a jury.

I cannot agree in this view, because it would have the effect of narrowing to a very considerable extent what was obviously the intention of the Legislature, namely, to avoid the intervention of a jury in all cases where the parties did not necessarily require it. If this construction were adopted, this state of things would arise, namely, that all issues from the County Courts brought for trial at any sittings of Assize and Nisi Prius, must be tried by a jury, and that the presiding judge at Nisi Prius could try such issues only without the intervention of a jury, as were raised in actions brought in his own court. This construction is so much opposed to what was evidently the intention of the Legislature, that in the absence of express words to that effect, I do not feel myself warranted in giving effect to it.

My judgment is, that as this case is one in which a judge's order was necessary, that all proceedings be stayed on the verdict until the fifth day of Michaelmas Term next.

Order accordingly.

Fitzsimmons v. McIntyre.

Prohibition—Right of County Judge to strike out of record, Counts, the pleas to which oust his jurisdiction—Partial Prohibition.

A County Court Judge at the trial of a case, made an order, upon the application of Plaintiff's counsel, striking out a count of the declaration and all pleadings relating thereto, because the pleadings thereunder ousted his jurisdiction.

Held, that he had the power so to do.

Held also, That if prohibition had been applied for before trial, it would only have been granted as to that count. That different causes of action included in same declaration may be severed and tried separately.

[Chambers, June 18th, 1869.]

The Record in this case contained three counts; 1st, for breach of covenant; 2nd, for assault; 3rd, trespass *quare domum fregit*. To the third count defendant pleaded "that the dwelling house was not the plaintiff's, as alleged." The record was entered at the last sittings of the County Court at Pembroke, and a summons for a prohibition was granted before, but not served till after trial. At the trial, defendant's counsel objected to the jurisdiction, as the title to land was brought into question by the plea to the third count, whereupon the plaintiff's counsel applied to the judge for an order striking out the third count and all pleadings relating thereto—which was granted, and the judge proceeded to try, and tried the remaining issues. A verdict was given for plaintiff. The summons for a prohibition having been served, was now argued before Mr. Justice Gwynne.

Harrison, Q.C., shewed cause, and contended that the three counts in the declaration contained separate and distinct causes of action, and the judge at trial had power to sever them. The judge having struck out the third count and pleadings relating thereto, there was nothing on the record to take away his jurisdiction. That the judge had power to make such an order, but that if he had not done so, but had allowed the record to remain as it was, he couid have tried the issues on the first two counts, and in that case the prohibition might have gone as to the third count; see *Walsh* v. *Ionides*, 1 E. & B. 383, and *Kerkin* v. *Kerkin*, 3 E. & B. 399.

Osler, in support of summons, contended that, as soon as the plea bringing the title to land into question was pleaded, the judge's jurisdiction ceased, and he had no power to do anything whatever in the case thereafter.

Gwynne, J.—The defendant obtained a summons calling upon the plaintiff to shew cause why a writ of prohibition should not issue to prohibit the judge of the County Court of the County of Renfrew from further proceeding with a cause in the County Court at the suit of *John A. Fitzsimmons* v. *James McIntyre*. Upon argument of the summons it appeared that the declaration in the cause contained three counts; 1st, for breach of covenant; 2nd, for assault; and 3rd, trespass *quare domum fregit*, and asportavit of chattels. Issues, in fact, were joined in respect of the causes of action in the 1st and