

not a promissory note, but the Court of Appeal (Lord Halisbury, L.C., and Lord Alverstone, C.J., and Jeune, P.P.D.) came to the conclusion that *Kirkwood v. Smith* was wrongly decided and reversed the decision of Wright, J. The Lord Chancellor expresses doubt whether the clause in question had any operation whatever.

PRACTICE—CHARGING ORDER—ENFORCING CHARGING ORDER BY SALE—JURISDICTION—LEAVE FOR SERVICE OUT OF JURISDICTION—ACTION TO ENFORCE CHARGING ORDER—JUDGMENT ACT, 1838 (1 & 2 VICT., C. 110) SS. 14, 15—R.S.O. C. 324, SS. 21, 22) RULE 64 (1) E.—(ONT. RULE 161 (E).)

In *Kolchmann v. Menrice*, (1903) 1 K.B. 534, the plaintiff had obtained a charging order against certain shares owned by the defendant in a joint stock company, and he thereupon applied in the same suit for an order authorizing the sale of the shares and the application of the proceeds in payment of his judgment debt, this being refused by Walton, J., on the authority of *Leggott v. Western*, 12 Q.B.D. 287; he then commenced an action for the same purpose and applied for leave to serve the writ out of the jurisdiction, and this was refused by Joyce, J. An appeal was brought from both orders, and the appeals were argued together, and the Court of Appeal (Williams and Stirling, L.J.J.) dismissed both appeals, holding that *Leggott v. Western* was rightly decided and that the cause of action was not within Rule 64 (Ont. Rule 161) and therefore there was no jurisdiction to authorize service of the writ out of the jurisdiction.

PRACTICE—ACTION BY TRUSTEE—SET OFF OF UNLIQUIDATED DAMAGES DUE BY CESTUI QUE TRUST—EQUITABLE DEFENCE—JUDICATURE ACT, 1873 (36 & 37 VICT., C. 66, S. 24, SUB-SS. 2, 3—RULE 199—(ONT. JUD. ACT, S. 75 (6))—(ONT. RULE 251).

Bankes v. Jarvis, (1903) 1 K.B. 549, was an action to recover a debt alleged to be due by the defendant to the plaintiff as trustee. The defendant pleaded by way of defence a claim for unliquidated damages against the plaintiffs' cestui que trust. The action was brought in the County Court, and the County Court judge held the claim set up in the defence could not be set off against the plaintiffs' claim, but the Divisional Court (Lord Alverstone, C.J., and Wills and Channell, J.J.) held that he was wrong, and that the claim was properly the subject of a set off by way of equitable defence under the Jud. Act, s. 24, sub-ss. 2, 3, and Rule 199, (Ont. Jud. Act, 557 (6), Ont. Rule, 251).