

Ont. Rep.] MAN. & MER. FIRE INS. CO. V. ATTWOOD—LE MESURIER V. TIERNEY. [C. L. Cham.

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

(Reported for the *Law Journal*, by E. SYDNEY SMITH,
Student-at-law).

THE MANUFACTURERS AND MERCHANTS FIRE
INSURANCE CO. V. ATTWOOD.

A. J. Act, 1873, sec. 24—*Examination*—"At issue."

Held, that an order of reference after declaration filed, and before issue joined has not the same effect as a joinder so as to enable either of the parties to examine the other under the A. J. Act.

[October 31, 1876.—MR. DALTON.]

After the declaration had been filed and before issue was joined, the case was ordered to be referred to arbitration. The plaintiff then obtained an order to examine the defendant under the A. J. Act, whereupon the defendant took out a summons to set this order aside.

J. H. Ferguson shewed cause. The order of reference has the same effect as a joinder of issue; see *Brown's Law Dictionary*, p. 105, and *Bacon v. Campbell*, 6 Prac. R. 275, where the examination of a defendant in ejectment was allowed, although no appearance had been entered by him. The case is at issue, within the meaning of the Act, when the pleadings are concluded, as the object of the A. J. Act in not allowing examination before issue joined was merely to prevent fishing applications.

Mr. Madden (Bethune, Osler and Moss) contra. The words "at issue" have a technical meaning, and must be interpreted strictly.

MR. DALTON said that, although, he would have preferred to allow the examination if he could have seen his way to do so, considered that the words "at issue" had a technical meaning which he could not disregard.

Order accordingly.

LE MESURIER V. TIERNEY.

Hab. fac. poss.—Lands detached from one County and attached to another.

Judgment in ejectment in 1867 for certain lands in County of Northumberland, and *hab. fac. poss.* to the Sheriff of that county who executed the writ. Subsequently, the lands sold, was by proclamation of the Lieutenant-Governor, detached from the County of Northumberland, and incorporated with the Village of Trenton, in the County of Hastings.

Held, that plaintiff might enter a suggestion of the facts upon the judgment roll, and issue an original writ of *hab. fac. poss.* to the Sheriff of the County of Hastings.

[December 2, 1876.—MR. DALTON.]

A summons was taken out calling upon the defendant to show cause why the plaintiff should not have leave to enter upon the judgment roll a suggestion, that since the issuing of execution in this cause, the land in question in this suit had been by proclamation of the Lieutenant-Governor in Council detached from the County of Northumberland, and incorporated in the Village of Trenton in the County of Hastings; and why a writ of *hab. fac. poss.* should not issue to the Sheriff of such County.

Osler shewed cause.

Clarke contra.

MR. DALTON thought it was a proper case for an application, and granted the order in the terms of the summons.

Order accordingly.

RAY V. BRIGGS.

Application to sell land under A. J. Act, 1873, secs. 35, 36, 37—Issue directed.

[October 29, 1876.—MR. DALTON.]

Judgment had been recovered against defendant and execution returned *nulla bona*.

Osler obtained a summons to sell the lands under A. J. Act, 1873, secs. 35, 36 and 37, on the ground that the lands had been conveyed by the defendant to his wife before judgment to delay hinder or defraud creditors.

Watson shewed cause, and read several affidavits which stated that the conveyances had not been made with any fraudulent intent.

MR. DALTON.—I do not think I should exercise the powers given by the statute to dispose of the matter summarily in Chambers, as the interests involved are of much importance. I will direct an issue to be tried between the parties as provided by the 37th section of the Act.

Order accordingly.

PURSER V. BRADBURN.

Costs—Certificate—Title.

Held, that in a plea of *non demisit* to a count in covenant, a question of title arises, which entitles the plaintiff to superior Court costs, although no certificate be granted.

[December 16, 1876.—WILSON, J.]

The action was brought by a tenant against his landlord for breach of covenant for quiet enjoyment; there were also two counts in tres