Full Court.] RITZ *v.* FROESE. [Dec. 23, 1898.

Sale of land under judgment—Pleading—Jurisdiction of the Court—Retroactive legislation—Irregularity or nullity.

Demurrer to the statement of claim in an action for possession of land. The plaintiffs alleged that an order of the Court had been made in March, 1896, for the sale of the interest of certain judgment debtors in the land to satisfy a judgment recovered in a County Court against them; that certain further proceedings had been taken under the order; that the plaintiffs had purchased the lands at the sale held in pursuance of the order, and that afterwards an order of the Court had been made vesting the land in the plaintiffs for all the estate, right, title and interest of the several persons formerly interested in the land. At the date of the orders relied on there was no legislation or rule of court enabling a Judge in Chambers to make such an order for sale under a County Court judgment, and the only mode of procedure was to commence an action to realize the lien on the land created by the registration of the certificate of the judgment; but by 60 Vict., c. 4, which came into force on 30th March, 1897, the following subsection was added to Rule 807 of the Queen's Bench Act, 1895:—"In the case of a County Court judgment an application may be made under Rule 803, or Rule 804, as the case may be. This amendment shall apply to orders and judgments heretofore made or entered, except in cases where such orders or judgments have been attacked before the passing of this amendment."

Defendant contended that the orders set forth in the statement of claim were manifestly made without jurisdiction, and were therefore altogether void, and that the amendment had not the effect of making them valid.

Held, per KILLAM and BAIN. JJ., that for anything that appeared in the statement of claim the order for sale may have been made in an action in this Court; that everything is to be intended in favour of the jurisdiction of a Superior Court: *Peacock* v. *Bell*, 1 Wm. Saund., 96; *Mayor of London* v. *Cox*, L.R. 2 H.L. 239; and that on that ground TAYLOR, C.J., was right in overruling the demurrer.

Held, also, per DUBUC, J., that the orders complained of having been made by a Court of competent jurisdiction were not absolutely void, but only irregular and voidable, and as long at they were standing could not be ignored or treated as nullities by any partiy affected by them who should have appealed against them, or applied to have them rescinded: *In re Padstow, &c., Association*, 20 Ch. D. 137; and that the amendment to the rules of court made by 60 Vict., c. 4, had the effect of validating the orders which had not been attacked in any way prior to its passing.

Tupper, Q. C., and *Phippen*, for plaintiff. *Ewart*, Q.C., for defendant.