

Div. Ct.]

RE CHRISTIE, McLEAN AND WHITESIDE.

[Div. Ct.]

sold and delivered in a case resembling this, and Willes J. said that even if the declaration had been deemed insufficient because it was not framed on the special agreement, he would have regarded the case as one in which an amendment would be allowed. There is ample power to amend in Division Court proceedings. And if such an amendment were permissible in the Superior Courts, surely if there should be an objection to the form of the notice of claim in the Division Court, an amendment of a similar notice would be proper there. I am not clear that there was any credit actually given in this case at all. It might well be contended that according to *Nickson v. Jackson*, 3 Stark. 227, and *Rugg v. Weir*, 16 C. B. N. S., 477, there was only an option given to the defendant to give promissory notes, which he having refused to do, the plaintiff was at liberty to sue forthwith for the price. But I do not enter into this question.

There was here a writing by which the original amount of the plaintiff's claim is ascertained by the signature of the defendant, and it appears to me that the application of the new act would be improperly restricted by allowing variations in forms of pleading to affect the jurisdiction it confers.

Certificate refused.

SECOND DIVISION COURT—DISTRICT OF MUSKOKA.

CHRISTIE, *Primary creditor*, McLEAN, *Primary debtor*, and WHITESIDE, *Garnishee*.

Division Courts Act—Attachment of debts.

Sec. 14 of Div. Courts Acts, 1880, does not refer to cases where there is a total want of jurisdiction, but to cases brought in a wrong Court.

[Bracebridge, Dec. 24, 1880.

This was an action brought by the primary creditor to recover from the primary debtor the sum of \$214, balance of an unsettled account.

No notice disputing the jurisdiction had been given.

When the case came on for hearing, objection was taken that the claim was beyond the jurisdiction of the Court.

Pepler, for the primary creditor, however, contended that as the primary debtor had not given notice disputing jurisdiction, under the provisions of 42 Vict., cap. 8, sec. 14, R. S.O.,

this Court, by that section of the Act had jurisdiction to try the case. He cited Sinclair's Division Court Act of 1880, p. 32, note (f).

The learned judge who heard the case, held that he had no jurisdiction to try the case, and stated that he had so held in the case of *Nicholls v. Harston*, in Third Division Court tried at Huntsville on the 18th of August last, when a similar question as to jurisdiction was raised; but, at the request of Mr. Pepler, and in order to afford him an opportunity of furnishing him, if he could do so, with authorities in support of his contention, he postponed the giving of judgment. The following was his judgment:

LOUNT, Co. J.—I am of opinion that sect. 14 of the Act of 1880 does not refer to cases where there is a total want of jurisdiction (as when the amount sued for is beyond what could properly be adjudicated upon or the cause of action was one which could not be maintained in a Division Court), but merely to such matters as those to which section 11 of the same Act refers, that is, suits entered in the wrong court, &c. In such cases the defendant is not at liberty to object to the jurisdiction unless he has given the necessary notice to that effect. Notwithstanding the *quasi* generality of this 14th section, the wording of the latter part of it shows, in my opinion, that it was the intention of the Legislature that only in cases of the kind I have mentioned (that is, cases which might properly have been entered in some other Division Court of the same or some other county, and which had been entered in the wrong Division Court) that jurisdiction to try was intended to be given by the omission of the notice disputing such jurisdiction. The words used are, "that in default of such notice disputing the jurisdiction of such court, the same shall be considered established and determined, and all proceedings may thereafter be taken as fully and effectually as if the said suit or proceeding had been *properly commenced, entered, or taken in such court*;" the latter words show that proceedings beyond the jurisdiction of Division Courts generally, were never contemplated, because no proceedings beyond their jurisdiction could be ever *properly commenced, entered, or taken in such court*. In cases like this, where the amount sought to be recovered is beyond the jurisdiction of the court, the latter words, "*such court*," mean not Division Courts generally, but the particular Division Court.