

Henderson, 28 O. R. 360, show a difference of opinion in the provincial Courts.

The first clause of this section, and the first clause of its sub-sec. 2, are but declaratory of the common law, as interpreted in *Rhodes v. Gent*, 5 B. & Ald. 244, and *Anderson v. Cleveland*, 13 East, 430, viz., that the presentment at the place named is essential, if a note is made payable at a particular place, but the maker is not discharged by any delay in such presentation short of the period fixed by the Statute of Limitations.

The new matter in this sec. 183 begins: "But if any suit or action is instituted thereon against him before presentation, the costs thereof shall be in the discretion of the Court."

The only question is its correct interpretation.

It recognises suit or action before presentation—a distinct change in the law—and is immediately preceded by words which excuse presentment on the day of payment, but not presentment at the place of payment.

It is suggested that this proviso only refers to non-presentation on the day the note matures. This cannot be, as no question of costs could possibly arise where due presentment was made before action brought. At no time was the holder as against the maker bound to present on the day of maturity; and the statute makes no change in that respect. What is there to support the idea that the holder might now be punished in costs for non-presentment on the day?

And, it is suggested, that it refers to the defendant's costs, in this way, that when he succeeds, as it is contended he must, if presentation is not made before action, the Court might still deprive him of the costs usually given to a successful suitor. It is difficult to see why, if presentation is necessary before suit brought, the defendant has relied upon his rights, and won his suit through the clear default of the holder to make the necessary presentation.

The better and fuller interpretation of this section appears to me to be, "you must present the note at the particular place it is made payable, not necessarily—as against the maker—on the day of its maturity, nor indeed, before suit; but if presentment is not made before suit, the costs being in the discretion of the Court, the maker will be protected from costs should—for instance—the funds to meet the note have been duly placed by him at the place named.