upon his pleading whether the jurisdiction would be ousted, and therefore Rule 189 did not apply to prevent the raising of the question of jurisdiction at the trial. It was contended that the defendant was estopped from disputing the plaintiff's title by his admissions and by reason of the plaintiff having recovered a judgment in ejectment against the defendant's tenants; but the plaintiff's claim was for damages for pulling down fences and for mesne profits for a period of five or six months prior to the date of the ejectment, and the admissions of title did not go further back than the ejectment.

Held, that the judgment against his tenants was evidence against the defendant, but that the title was really in question, and necessary to be proved in respect of the period for which mesne profits were claimed prior to the ejectment.

Co. Ct. Carleton.]

HOUSTON v. MCLAREN.

A lease from the defendant to the plaintiff under the Short Forms Act contained the usual covenant by the plaintiff, the lessee, to keep up fences, but the defendant, the lessor, undertook and agreed "to build the line fence between the premises hereby demised and the farm of D. M., should the same be required during the currency of the lease."

It appeared by the evidence that there was no line fence between the farms, but that there was a fence upon D. M.'s land about twenty-four yards south of the boundary line. The plaintiff alleged that this fence was out of repair, that the defendant would not mend it, and that in consequence damage had been done to his crops by cattle, and he contended that the condition "required during the currency of the lease" was fulfilled by the fence on D. M.'s land being out of repair.

Held, affirming the judgment of the court below, that no liability could accrue under the defendant's covenant until something occurred to disturb the state of things existing at the time the lease was made, and that the covenant was designed to meet such a contingency as D. M. refusing to allow entry on his land to repair the fence or requiring the line fence to be built.

Semble, per HAGARTY, C.J.O.—That the plaintiff's covenant to keep up fences applied to all then existing fences used for the protection of the farm, and would be properly applicable to the fence on D. M.'s land so long as it remained as it then was; but

Per BURTON and PATTERSON, JJ.A.—The plaintiff's covenant would only extend to fences on the demised premises.

C. P. Div.]

SCOTT v. CRERAR.

Libel—Evidence.

On the trial of an action for a libel contained in an anonymous letter circulated among members of the legal profession in the city of H., charging the plaintiff with unprofessional conduct, no direct evidence was given to shew that the defendant was the author of the letter, but the plaintiff relied upon several circumstances pointing to that conclusion. The judge at the trial refused to admit some of the evidence tendered.

Held, reversing the judgment of the Common Pleas Division, 11 O. R. 541, that evidence of the defendant being in the habit of using certain unusual expressions which also occurred in the letter, was improperly rejected; but

Semble, a witness could not be asked his opinion as to the authorship of the letter; and

Per BURTON, J.A.—Evidence of literary style on which to found a comparison, if admissible at all, is not so otherwise than as expert evidence.

Q. B. Div.] [March 15.

KNIGHT v. MEDORA.

Division Courts—Prohibition—Jurisdiction.

The judgment of the Q. B. D. 11 O.R. 138, refusing to order prohibition to a Division Court, was affirmed on appeal on the ground that the title to land was not brought in question; but

Held, per PATTERSON and OSLER, H. A. (disagreeing with the court below, and affirming *Mead* v. *Creary*, 8 P. R. 374, 32 C. P. 1), that the notice under 48 Vict. c. 14, s. 1, amending 43 Vict. c. 8, s. 14, disputing the jurisdiction, is