Q. B. Div'l Ct.] [March 8.

ELLIOT *v.* MCCUAIG.

Courts — Divisional Court — Jurisdiction in County Court action—Order for arrest.

A Divisional Court has power, under Rule 1051, to set aside or vary an order for arrest made by a County Court Judge in a County Court action.

Pepler for the plaintiff.

Plaxton for the defendant.

Mr. DALTON.] [March 8.

BUILDING AND LOAN ASSOCIATION *v.* BETZNER.

Chattel mortgage—Affidavit of bona fides sworn before execution.

This was an interpleader application made by the Sheriff of Waterloo to the Master in Chambers, on the 7th March, 1890.

THE MASTER IN CHAMBERS.—In the interpleader arising out of this case it has been agreed by the parties that, instead of making an interpleader order sending this case for trial, I should consider the matter — being indeed simply a question of law — and give a final order disposing of the rights.

The claimant is a lady who advanced $1,000 on the security of a chattel mortgage, and the question is now between this mortgagee and a judgment creditor who claims to seize for his debt upon a *fi. fa.* the goods covered by the mortgage. The sheriff has interpleaded. The case, as respects the mortgagee, appears to be strictly honest and correct. The money was advanced on the 7th of the month on the mortgage security agreed to be given. It happened that the parties to the mortgage resided in different places, so the business was conducted through agents. And so by misfortune it turned out that the mortgagee swore to the statutory affidavit necessarily to be made by the mortgagee, on the 13th of the month, whereas the mortgage was not executed by the mortgagor until the following day—the 14th.

I am bound by authority exactly in point. On the 15th October, 1885, the Court of Appeal held in a case of *Reid* v. *Gowans*, which came from the County Court of Hastings, that a chattel mortgage made on the 13th, the same statutory affidavit as to which was made by the mortgagee on the 8th, was invalid. In that case, as in the present, the claim of the mortgagor was perfectly honest, but the mortgage was held bad.

If parties choose to dispute the rights of a mortgagee in such a case, they may be in a legal position to do so.

My order will be the usual final order in interpleader protecting the sheriff, and ordering him to sell the goods under the *fi. fa.* The claimant to pay all costs of the interpleader, of the sheriff, and the plaintiffs.

Because the decision given on the argument by the Court of Appeal has not been reported, I now give my decision in writing, that there may appear in the reports a reference to the case on this point.

R. V. Clement for the sheriff.

A. Cassels for the execution creditors.

Crooks for the claimant.

ROBERTSON, J.] [March 10.

FOWLE *v.* CANADIAN PACIFIC R. W. CO.

Discovery—Examination of officer of railway company—Section foreman.

In an action to recover the value of horses killed by a train on the defendants' railway, it was alleged by the plaintiff and denied by the defendants that the latter had failed to erect and maintain proper fences on either side of the railway where it crossed the plaintiff's property.

Held, that the foreman who had charge of the fences on the railway in the section which included the *locus in quo*, subject to the orders of a roadmaster, was not an officer of the defendants' who could be examined for discovery.

Knight v. *Grand Trunk R. W. Co.*, *ante* p. 90, and *Leach* v. *Grand Trunk R. W. Co.*, *ante* p. 91, followed.

C. J. Holman for plaintiff.

A. MacMurchy for defendants.

MACMAHON, J.] [March 12.

SIMPSON *v.* MURRAY.

Dismissing action—Want of prosecution—Rule 647—Default of entry for two sittings—Notice of trial for second sittings.

Where the plaintiff was in default for not giving notice of trial for the Autumn Assizes, but the defendant did not move to dismiss the action, and the plaintiff gave notice of trial for the Winter Assizes, but neither party entered the action for trial,