going around and delivering the goods and receiving the payment therefor as if the transaction was all completed at the one time. It would seem to be merely an evasion of the requirements of the statute which provides that a license shall be obtained. The seller has the advantage over the local trader by not having to pay rent or taxes, or in any other way assisting to bear the municipal burdens that the shop-keeper has to sustain. Besides this, the public are exposed to the evil of irresponsible persons from a distance going from house to house, very usually with inferior goods which are bought very generally by those who are inexperienced in business matters and while the head of the family may be absent from home.

FIRST DIVISION COURT OF YORK.

BARBER v. BINGHAM.

Division Court Rules—No power to add Defendants.

The plaintiff brought an action against one of two copartners upon a promissory note made in the firm name for a partnership debt. The partner not joined was within the jurisdiction at time action commenced.

Held, that under the rules of the Division Court there was no authority to add the partner not sued.

Held also, that the adding of a defendant was not a principle of practice of the Courts of Common Law, and not a case for the exercise of the Judge's discretion. *Building and Loan* v. *Heimrod*, 19 C. L. J. 254 followed, and rules of Judicature Act held not in force in the Division Court.

[Toronto, October 24, 1883.

MCDOUGALL, J. J.—For the reasons expressed in my former judgment in *Building and Loan Co.* v. *Heimrod*, *ante*, I do not think that the rules of the Judicature Act apply "*ex vi termini*" to the practice in the Division Court; consequently in this case the application at the trial to add a defendant must be refused or granted upon the authority of Division Court rules, acts, and practice. Now there is no express authority in the rules anywhere given to a judge to add a defendant, although there is an express rule dealing with the question of adding additional plaintiffs (Rule 111). There is express power given to strike out the name of one or more of several defendants (Rules 112 and 113); and by Rule 115, a person appearing at the hearing, and admitting that he is the person whom the plaintiff intended to charge, may have his name substituted for the defendant if the plaintiff consents; but none of these rules covers the case of a plaintiff who has sued too few in number (as in this case one member of a copartnership), and who asks leave to add the name of the party omitted as a defendant. The very fact that these various rules cover so many special difficulties likely to arise in the joinder of proper parties, renders stronger the argument that it was never intended to allow a plaintiff the relief asked for in this case, and that it was a case designedly left unprovided for, for reasons satisfactory to the framers of the rules. In this view of the effect and spirit of the rules which are so elastic in so many ways, I think I would be usurping the functions of the Legislature, or of the Board of County Judges, did I allow a new practice upon such an important point under any discretionary power conferred by section 244 of the Act. Besides, this power to add defendants was not a principle of practice of the Superior Court of Common Law until after the passing of the Judicature Act.

I must, therefore, nonsuit the plaintiff for not joining the partner of the present defendant, who has been proved to have been within the jurisdiction of the Court at the time this action was commenced. The present defendant will be entitled to his costs.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT.

SHIELDS v. PEAK.

Judgment on demurrer appealable—Supreme Court Amendment Act, 1879, *sec.* 3, 38 *Vict. cap.* 16, *sec.* 136—*Construction of—Purchase of goods by insolvent outside of Dominion of Canada—Pleadings.*

The action was commenced by P., and other merchants carrying on business in England to