

be iniquitous to place it in the power of a wrongdoer to leave his victim without legal redress by the simple expedient of completing his ruin. This would be a violation of the fundamental principle of Magna Charta, "*Nulli negabimus justitiam aut rectum.*" Nay, it would deny justice precisely where it is most needed; for a debt or injury of which the rich man thinks little, may be a matter of life and death to the poor. To enact that in no case should a pauper plaintiff be permitted to proceed with an action at law or suit in equity, without giving security for costs, would therefore offend against a fundamental principle of natural justice far more sacred and inviolable than that upon which legislation has acted in affording to defendants their existing protection.

The practical question is, how these principles may best be reconciled: the poor man enabled to enforce his just rights, and the public protected against groundless litigation, undertaken by those to whom their liability to costs, if unsuccessful, has no terrors. *Cantabit vacuus*—as well before the sheriff's officer as before the robber. There is a class of actions known as speculative which are by no means identical with those in which the plaintiff is a pauper. An action, for example, by a pauper on the foot of a bill of exchange, or a suit in equity by a pauper for the construction of a will or deed under which he claims, could scarcely be called "speculative," unless by a very wide extension of the term. Can no means be devised of distinguishing between the two classes of cases in which the plaintiff is not a mark for costs, allowing him to proceed in any proceeding which is legitimately instituted to enforce a fair claim, or to obtain redress for a substantial injury, but requiring sufficient security where the action really belongs to the class known as "speculative?" It is perfectly impossible to notice this distinction by any hard and fast line, drawn by the Legislature. If it is to be made at all, it must be by virtue of a discretion vested in some tribunal. We are strongly in favor of the creation somewhere of a discretionary power to require security for costs from litigants—plaintiffs or defendants—in any proceeding where it is shown, first, that in the absence of such security, the opposite party, if successful would lose his costs; and secondly, that having regard to the nature of the action, the relation of the parties, and the circumstances of the case, it would be productive of hardship or injustice that proceedings should be carried on without such security. Probably this power might best be conferred upon the master of the court; but these and other questions of detail must be considered at a future time. We desire at present to call attention to what we cannot but consider a serious blot in our judicial system.—*Irish Law Times.*

ONTARIO REPORTS.

COMMON LAW CHAMBERS.

(Reported by HENRY O'BRIEN, Esq., Barrister-at-Law.)

OROK V. GARVIN.

Certificate for full costs—Overflowing land—1s. Damages.

Under the Statute of Ontario, 31 Vic. ch. 24, sec. 1, a judge should certify for costs where he would have done so under the repealed section of the C. L. P. Act.

In an action for overflowing plaintiff's land, the defendant pleaded not guilty, and the jury found for plaintiff and 1s. damages.

Held, that under the circumstances of the case (there being important rights at stake, and it being such a case as would properly be removable from an inferior court by *certiorari*), the plaintiff was entitled to a certificate for full costs under 31 Vic. ch. 24, sec. 1 (Ont).

[Chambers, December. 1869.]

This was an action for overflowing plaintiff's land by a dam maintained by defendant. The plea was not guilty. The jury found for plaintiff and one shilling damages. The plaintiff's counsel moved for the necessary certificates to entitle him to full costs, and to deprive defendant from setting off costs.

McCarthy, for plaintiffs, subsequently, on notice to the other side, renewed his application before the Chief Justice who tried the case. He contended that the action was really brought to try a right besides the right to recover damages, and that it was not a case of the kind proper to be tried in the County or Division Courts: that the act of defendant was such as might, if permitted, ripen into a right; and plaintiff was bound to bring an action to prevent this, and his action could only properly be brought in a proper court of record, so that, in the event of it being necessary to shew a recovery by the plaintiff in answer to a plea of enjoyment as of right for twenty years or more, he could prove the recovery by record made up with pleadings, postea, judgment, &c. If it were a case that was completely within the jurisdiction of the County Court, and the plaintiff could have known that at the outset, yet as the decision of the question raised in it might deprive the owner of the mill occupied by the defendant of a valuable right—viz., to raise the water to work the mill—plaintiff might well think that if he had brought the action in the County Court, the defendant would have applied to remove it by *certiorari*. Independently of this the law on the subject of riparian rights has recently been much discussed in England, and a question of great difficulty might arise in a suit of this kind.

Boys, for the defendant, contended that in this action it was simply decided that defendant had by his act injured the plaintiff to the extent of one shilling. The pleadings raised no question of right, and there was no more necessity for bringing this action in the superior courts than there would have been if defendant had cut a tree on the plaintiff's land, and the latter had brought an action to recover damages for the trespass, defendant setting up no right to commit the trespass, but merely denying the fact: *Emery v. Iredale*, 7 U. C. L. J. 181; *Thompson v. Crawford*, 9 U. C. L. J. 262; *Mitchell v. Barry*, 26 U. C. Q. B. 416; *Marriott v. Stanley*, 9 Dowd.