

(Ont. Rule 473), which enables the Court to do justice without regard to technicalities."

JOY V. HADLEY.

*Imp. O. 31, r. 21—Ont. Rule 237—Order for discovery—Service—Attachment.*

[L. R. 22 Ch. D.]

In an action for the specific performance of an agreement by the defendant to sell two leasehold houses to the plaintiff, judgment for specific performance was given, and an order was afterwards made that the defendant should, within four days after service of the order, produce to the plaintiff "the abstract, and at the same time produce upon oath for inspection all deeds and writings in his possession or power," relating to the property.

*Held*, under the above rule, service of this order on the defendant's solicitors was sufficient service to found an application to attach the defendant for disobedience of the order.

NICHOLS V. EVANS.

*Imp. O. 30, rr. 1, 4, O. 55, r. 1—Ont. Rules 215, 218, 428—Payment into court in satisfaction—Costs.*

*Imp. O. 30* (Ont. O. 26), applies only to an action which is strictly brought to recover a debt or damages. If an account is claimed the order does not apply, and, even if the plaintiff accepts in satisfaction of his whole cause of action a sum paid into Court by the defendant, the Court has a discretion as to the costs.

[L. R. 22, Ch. D.]

FRY, J.—"In my judgment the order applies, as is shown by Rule 1, only to a case in which the plaintiff is strictly seeking to recover a debt or damages, where the whole demand applies to money. If the plaintiff seeks an account it is impossible to satisfy that demand by any specific payment of money. I think, therefore, that the Court has, in the present case, a discretion as to the costs."

NOTES OF CANADIAN CASES.

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QUEEN'S BENCH DIVISION.

Osler, J.]

PERE ADAMS V. THE CORPORATION OF THE TOWNSHIP OF EAST WHITBY.

*Closing travelled road—Other convenient access to lands—Onus of proof—Dedication.*

The power of a municipal council to close up a road under sect. 504 of the Municipal Act, whereby any one is excluded from access to his lands, is a conditional one only; and if another convenient road is not already in existence, or is not opened by another by-law passed before the time fixed for closing the road, the by-law closing the road may be quashed.

The *onus* of showing that another convenient road is open to the applicant, is upon the corporation.

The corporation of East Whitby, by by-law, closed up an old travelled road whereby the applicant was shut out from ingress to his lands, except by a short road leading to the original road allowance which was now for the first time opened. For some years prior to 1844, the short road was used as a private road, for the convenience of persons going to one F.'s place, mills, brewery and distillery. In 1844 F. conveyed the land on each side of it to his son and son-in-law, but no mention was made of it in the deeds. The wife of the purchaser from the son-in-law, while speaking to F. at one time about the title, as to which some dispute arose, complained that the old travelled road was closed up. F. replied that they would still have the short road leading to the road allowance, which would still be opened if the old travelled road were closed.

*Held*, that the latter statement, in connection with the facts of the former user of the road, and of its not having been disposed of when F. disposed of the lands on each side thereof, sufficiently showed the intention to dedicate the short road to the public; that the applicant had therefore another convenient way to his lands, and that the by-law should not be quashed; but under the circumstance, without costs.