an understanding has been come to which prevents a conflict of decisions. It is usual for counsel in argument before either court to state whether or not the same question is before the other Court, and the usual result is, that the two courts consult and probably pronounce similar judgments. If through counsel or otherwise either court learns that the other has already determined the question raised, it is the practice of the former, to pronounce a *pro forma* judgment in accordance with the decision of the latter court. In this way conflict is avoided, and by an appeal to the Court of Error and Appeal, error, if any, is corrected. So far no difficulty is experienced.

But it is to be remembered that each of the superior courts of common law exercises, besides an original, an appellate jurisdiction. Here it is that a difficulty of some consequence arises. An appeal lies from any of the county courts to one or other of the superior courts of common law, (the party dissatisfied having the choice of courts,) and the decision of the latter is conclusive upon the parties. If the question involved in the appeal is one about which the courts are at conflict, the party dissatisfied chooses the court which is certain to favor his view of the law and to decide accordingly. Thus in fact the party against whom the decision is delivered in the County Court has an immense advantage over the party successful in that court. Neither party cares much which way the county judge decides. Each, hopes that the decision may be against him in order that he may while appealing so direct his appeal that the decision will be reversed without further or other appeal. Under such circumstances the party who fails in the County Court is really the successful party. This, though apparently a paradox in sentiment, is an abomination in practice.

Take an illustration. It is provided by sec. 4 of Consol. Stat. U. C. cap. 45, that "Every sale of goods and chattels not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the goods and chattels sold shall be in writing, and such writing shall be a conveyance under the provisions of this Act, and shall be accompanied by an affidavit of a witness thereto of the due execution thereof, and an affidavit of the bargainee, &c., that the sale is *bona fide*, &c., and such conveyance, &c., shall be registered as hereinafter provided, *within five days from the executing thereof, otherwise* the sale shall be absolutely void as against the creditors of the bargainor and as against subsequent purchasers or mortgagees in good faith." The question arises as to the effect of the five days within which the instrument is required to be registered as against a writ of *fieri facias* placed in the Sheriff's hands between the day of execution and the day of registry. The Court of Queen's Bench holds that the instrument must prevail as against the writ, if registered within the five days, (*Feehan* v. *The Bank of Toronto*, 19 U. C. Q. B. 474,) and the Court of Common Pleas in a suit between the very same parties on the very same question, has arrived at a contrary conclusion (*Feehan* v. *The Bank of Toronto*, 10 U. C. C. P. 32). The Judge of the County Court of Elgin, in an elaborate judgment, (*McInnes* v. *Haight*, published in other columns,) coincides with the ruling of the Court of Queen's Bench. The suitor against whom the County Judge rules has it in his power to appeal, and will probably do so, to the Court of Common Pleas, which court will reverse the decision. If the decision of the County Judge had been different the appeal would have been to the Court of Queen's Bench with an opposite result.

In view of such facts as these the practice of law becomes a species of gambling, and the sooner the difficulty suggested is adjusted by the Legislatuse the better for suitors, the better for the profession, and the better for the reputation of our law and its administration.

It may, however, be said, how is it that the two superior courts of common law are at conflict on such a question? Why is it that the one did not deliver a *pro forma* judgment, in accordance with the decision of the other, and leave the parties to their remedy in Error and Appeal? We cannot answer the questions, but do not see that a *pro forma* judgment would have improved the matter, so long as the decision of either of the superior courts is final on an appeal from a County Court. Let us suppose that the Court of Common Pleas had, though differing in opinion from the Court of Queen's Bench, given a *pro forma* judgment, contrary to their own convictions, but in accordance with the Queen's Bench decision, that course would have been, we admit, very proper and very reasonable, but only so long as the unsuccessful party could carry his plaint into the Court of Error and Appeal. It is of little consequence which way a court decides, if the decision is given merely to enable the unsuccessful party to appeal to the highest tribunal in the colony. But the case is very different where one of the co-ordinate courts between which the conflict exists is sitting as a court of appeal from a decision pronounced by a county judge. To ask the court, under these circumstances, to deliver a *pro forma* judgment contrary to their own convictions, which would have the effect of concluding the parties, would be to ask it to perpetrate a legal farce. Hence it was that the Court of Common Pleas during last term, in the case of *Dickson* v. *Pinch*, (reported among the list of judgments elsewhere) laid down the rule, that, where a Court sits in the exercise of an appellate jurisdiction, it will not consider itself bound by the decision of a Court of co-ordinate jurisdiction, but express its own judgment on the question submitted.