

Div. Ct.]

BUILDING AND LOAN ASSOCIATION V. HEIMROD.

[Div. Ct.]

This section, I think, refers only to the complete legal and equitable jurisdiction conferred upon all the divisions composing the High Court of Justice and Court of Appeal, and more particularly set out in section 16 of the Act. It does not purport to deal with the practice; but it enacts that for the purpose of administering complete relief, redress, or affording adequate remedy, the County Courts and Division Courts shall possess, within their several jurisdictions, the same legal and equitable powers as those possessed by the High Court of Justice. This was clearly a necessary provision in the case of the County Court, which had been deprived of its former equitable jurisdiction by the Law Reform Act, (32 Vict. Ont. cap. 6, sect. 4). It might not, perhaps, be so necessary to enact with reference to the Division Courts which were already Courts of Equity and good conscience, (R. S. O. cap. 47, sect. 54, sub-sect. 2), but doubtless for the purpose of removing all doubts the section was made to extend to all inferior Courts of civil jurisdiction. It does not add to the machinery of the Division Courts, and therefore there will be many cases where, in order to secure remedies or redress which the Division Courts, from lack of territorial jurisdiction or adequate machinery are unable to extend to a suitor, the cause will have to be removed by *certiorari* to the Superior Court. This is provided for by sect. 61 of D. C. Act, and sect. 78 of the Judicature Act will also meet the class of cases where the counter claim or cross relief sought by a defendant exceeds the powers or jurisdiction of the Division Courts.

Section 80 of the Judicature Act enacts that, "The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in Ontario, so far as the matters to which such rules relate shall be respectively cognizable by such Courts. This clearly, in my opinion, refers only to the rules of law laid down in section 17 of the Act. What then is the effect of the rules set out in the schedule to the Act? Section 53 defines very plainly their application "as to all matters to which they extend," they shall thenceforth regulate the proceedings *in the High Court of Justice*.

This direct and positive limitation, I think, confines their application to that Court alone, except where a rule in express terms is made ap-

plicable to either the County Court or Division Court. In support of this view see Rule 490, (already referred to), which extends the practice and procedure of the H. C. J., with certain limitations, to the County Court: Rule 264 which is directed in express terms to be construed as applying to County Courts: Rule 489, which confers jurisdiction upon County Court and Division Court judges to deal with the question of costs where the Court discovers that they have no original jurisdiction to deal with the subject matter of the suit: and Rule 456, abolishing County Court terms, notwithstanding the general language contained in section 18 of the Act, though it is true that such section is under the head "High Court," and to other rules under the head of "County Court" in the schedule.

The provisions of the D. C. Act, on the subject of nonsuit, are as follows:—Section 81, after stating the mode of procedure at the trial of an action, goes on to say, "and if satisfactory proof is not given to the judge entitling either party to judgment, he may nonsuit the plaintiff; and the plaintiff may, before verdict in jury cases and before judgment pronounced in other cases, insist on being nonsuited." Rule 122 supplements an apparent omission in the statutory clause by giving the judge power to nonsuit in jury cases, even where the plaintiff does not request it.

At law, before the Judicature Act, a nonsuit was regarded as a default only, and not a judgment upon the merits. It was not conclusive of the plaintiff's rights, and he had the opportunity of bringing his action on again, either in another shape or when better prepared with evidence, while if a verdict were once given, and judgment entered thereon, he was forever barred from suing the defendant upon the same ground of complaint: Archbold's Q. B. Practice, 12th ed. 444. The only penalty a nonsuit imposed upon him was the payment of the defendant's costs. It was not a rule of law, but a rule of practice.

This, then, was the meaning and effect of a nonsuit at the date of the passing of the D. C. Act. I do not think, in view of the sections of the Judicature Act to which I have called attention, that any of the Rules of Court in the schedule to the Judicature Act *ex vi termini* govern the practice in the Division Court except such rules as contain express language making them applicable to that Court, *e. g.*, Rule 489.