

*Practice.*

Street, J.] [Mar. 12.  
Q. B. Division Court.] [May 22.

LOWDEN v. MARTIN.

*Promissory note—Proposal to renew in part refused—Effect of acceptance of cheque for balance—Judgment under Rule 80.*

At maturity of certain promissory notes made by the defendants, and held by the plaintiffs, the defendants sent the plaintiffs a proposal for a renewal in part, accompanied by a cheque for part of the amount due, and two renewal notes for the balance, the total amount including a sum for interest on the renewals. The plaintiffs returned the renewal notes, but retained the cheque, and brought this action upon the original notes, giving credit for the amount of the cheque.

*Held*, by STREET, J., in Chambers, refusing a motion for judgment under Rule 80, that although there was no obligation on the part of the creditors to assent to the debtors' proposal, yet by receiving the cheque and keeping it they must be taken to have applied it in the manner in which the debtors, when tendering it, stipulated, and as it included interest in advance upon the renewals, the creditors were bound to give the debtors the benefit of the time for which the renewals were drawn.

*Held*, by the Divisional Court on appeal, that on the state of facts presented, the plaintiffs were not entitled to the indulgence of a speedy judgment and execution.

*Kappele*, for the plaintiffs.

*F. W. Garvin*, for the defendants.

Rose, J.] [May 22.

BANK OF LONDON v. GUARANTEE COMPANY  
OF NORTH AMERICA.

*Payment into Court—Withdrawal of part of claim—Dismissing action—Costs—Rules 170, 218.*

The plaintiffs claimed in this action \$3,249.36, amount of defalcation of J., and \$90.55 for certain expenses connected therewith, in all, \$3,339.91. The defendants paid into court \$3,273, claiming by their notice of payment in that it was sufficient to satisfy the plaintiffs' claim. There was no specific application of the money paid in to any part of the claim. The plaintiffs did not deliver a statement of

claim, and upon notice of a motion under Rule 203 to dismiss the action being served by the defendants, the plaintiffs gave a notice under Rule 170 of withdrawal of balance of their claim.

*Held*, that the plaintiffs had no power under Rule 170 to withdraw; the portion of Rule 170 relating to the withdrawal of part of the alleged cause of complaint is applicable only where the part sought to be withdrawn can be severed from the rest of the claim; and an order dismissing the action was proper.

*Semle*, that the plaintiffs not having, under Rule 218, accepted the money in full satisfaction of their claim, were liable to pay the whole costs of the action; but the disposition of costs by the local judge who made the order was not interfered with on appeal.

*Aylesworth*, for the plaintiffs.

*H. J. Scott*, Q.C., for the defendants.

## Law Students' Department.

### LOAN OF BOOKS TO STUDENTS BY LAW SOCIETY.

TO THE EDITOR OF THE LAW JOURNAL :

*Sir*,—At present a rule obtains in the management of that part of the Osgoode Hall Library which has hitherto been available to students, which requires each student, in addition to furnishing a certificate that he is a "fit and proper person" to receive books, to deposit with the Treasurer the sum of \$10 as security for their due return.

It is proposed to advance some reasons why this obnoxious rule should be abated.

1. It is a penalty, and virtually prohibits deserving students from the privileges of the library, which is all the more distasteful in view of the fact that students are accorded but too few privileges already.

2. It is unnecessary. The law students are as a class an honourable set of young fellows, who would scorn to make a dishonourable use of the privileges of the library; moreover the books of the library are so stamped to indicate they are the property of the Law Society, that to turn them to personal use is virtually an impossibility.

3. The amount of the deposit should not in any case be so excessive. The average value of the books which are taken out by students does not exceed \$5.00, and one book only is allowed out at a time. The imposition of a \$10 deposit would seem to indicate that the Society are unnecessarily apprehensive and suspicious for the return of the books.

4. The Law Society has jurisdiction over the proper conduct of its members, among whom are the students, and this can be actively enforced; and if a student, after having given a written receipt for a book, and having de-