

said (A. B.) may have his just remedy in that behalf. And to summon the said (C. D.), by serving a copy of this writ upon him, to appear at the sittings of this Court to be holden at —, in the Township of —, in the County of —, on the — day of —, A.D. 1860, at the hour of — in the forenoon to answer to the said (A. B.) in an action for unjustly taking and detaining (or unjustly detaining) his goods, chattels, and personal property, aforesaid. And to return this writ and what you shall have done in the premises, to the Clerk of the Court forthwith. And herein fail not.

Given under the seal of the Court this — day of —, 1860.

To — Bailiff of the }  
said Court. } Clerk.

### FORM OF AFFIDAVIT FOR WRIT OF REPLEVIN.

In the — Division Court of the County of —.

I, A. B., of —, make oath and say:

1st. That I am the owner of (describe property fully). at present in the possession of C. D.

Or, That I am entitled to the immediate possession of (describe property), as lessee, (bailee or agent,) of E. F., the owner thereof, (or as Trustee for E. F.) (or as the case may be,) at present in the possession of C. D.

2nd. That the said goods, chattels, and personal property are of the value of — dollars.

3rd. That on or about the — day of —, the said goods, chattels, and personal property, were lent to the said C. D., for a period which has expired, (or were delivered to the said C. D., for a special purpose, namely, —) and that although the said goods, chattels, and personal property have been demanded from the said C. D., he wrongfully withholds and detains the same from me, the said A. B.

Or, That on or about the — day of —, the said C. D., wrongfully took the said goods out of my possession, (or out of the possession of E. F.,) and withholds and detains the same from me.

Or, That on or about the — day of —, the said C. D., fraudulently obtained possession of the said goods, chattels, and personal property, by falsely representing that —, and now wrongfully withholds and detains the same from me.

Or, That the said goods, chattels, and personal property were on the — day of —, last, distrained or taken by the said C. D., under color of a distress for rent, alleged to be due by me, to one E. F., when in fact no rent was due by me to the said E. F. (or as the case may be).

4th. That the said C. D. resides (or carries on business), at —, within the limits of the — Division Court of the County of —. (Or that the said goods, chattels, and personal property were distrained,) (or taken and detained,) (or detained,) at —, within the limits of the — Division Court, of the County of —.

Sworn, &c.

NOTE.—(If the property claimed, consists of a single article, the name of the article may be substituted for the words goods, chattels, and personal property, and the verb altered to the singular number.)

WINDSOR, 11th August, 1860.

To the Editors of the Law Journal.

GENTLEMEN,—You will please excuse the liberty I have taken in asking your opinion on the following questions:

1st. Has the Judge of a Division Court a right to extend time on an execution in Bailiff's hands, under ordinary circumstances?

2nd. Is it lawful to grant a new trial after a judgment has

been rendered on an interpleader? Some of our Judges have decided they have not the power to do so, while others contend that they have.

Please answer in your next issue and oblige

Your obedient Servant,

E. S. WHIFFLE.

[1st. We do not think that the Judge of a Division Court has any power, under ordinary circumstances, to extend the time for payment of an execution in the Bailiff's hands. After an execution is once issued, the party in whose behalf it is sued out has, in our opinion, alone the right to exercise such control over it.

2nd. We are of opinion that the Judge has the power of granting a new trial in interpleader matters as in other cases.

The section of the Act which regulates the practice in interpleader cases states, that the order of the Judge "shall be enforced in such manner as any order made in any suit brought in such Court, and such order shall be final and conclusive between the parties." This might seem to lead to the inference that the parties would not be entitled to a second hearing, but when taken in connection with the 84th section of the Division Court's Act of 1850, wherein it is also provided, that every order and judgment of any Division Court "shall be final and conclusive," but goes on to provide that "the Judge shall also, in every case whatever, have the power, if he shall think fit, to order a new trial;" we think that the opposite conclusion must be arrived at.

Upon principle, also, we shall hold the same opinion, as it is in accordance with the true spirit of the law to give every facility for arriving at a just decision on any matter in dispute, and it would manifestly lead to an injustice being done to suitors, if an exception were made in the instance of an interpleader issue.

The decision of a Division Court Judge is made to be final or without appeal, because the jurisdiction being so limited it was assumed that he would be fully competent to form a correct opinion on any subject coming before him, but could never be intended by the Legislature to deny him the power of doing suitors as ample justice, in every case, as they might have in the higher Courts.—Eds. L. J.]

## U. C. REPORTS.

### QUEEN'S BENCH.

Reported by CHRISTOPHER ROBINSON, Esq., Barrister-at-Law.

#### THE CORPORATION OF THE TOWNSHIP OF WHITBY V. HARRISON.

Collector of Taxes—Action against his surety—Delivery to him of roll—Oath of office—Township of Whitby—Division of by 20 Vic., ch. 113

To an action against a surety for a collector of taxes for moneys received and not paid over, defendant pleaded that no roll properly certified was received by the collector, but that he collected the moneys wrongfully and without authority. It appeared that a roll was delivered to him signed by the clerk, but not otherwise certified. Held sufficient authority.

Defendant also pleaded that the collector had not taken the oath of office. Held, that the proof of such issue lay upon him. The bond was taken to "the Municipality of the Township of Whitby," and afterwards the Township was divided by 20 Vic., ch. 113, into Whitby and East Whitby. Held, that the bond was properly sued upon in the name of the Corporation of Whitby.

This was an action brought by the plaintiff to recover from the defendant, as surety for one Thomas Hodgson, collector for the township of Whitby for the year 1857, a sum of money for rates and assessments for that year collected by the said Hodgson, and not paid over to the treasurer of the municipality.

The case was tried at Whitby, before Hagarty, J., and a verdict entered for the plaintiffs for £2,000 debt, and damages assessed by consent at £200, subject to the opinion of the court; and it was agreed that if the court should be of opinion that the plaintiffs were entitled to recover, the amount of damages should be settled by a reference.