of any right the relator may have to use this road. It is obvious his attention was drawn to this matter in August, 1863: that he was aware of the intended proceeding; and yet his first application to this Court is not made until more than two years and nine months afterwards. We think it right to follow the decision in the Court of Common Pleas, of *Hill* v. *The Municipality of Tecumseth*, 6 U. C. C. P. 297, and *Cotton* v. *The Municipality of Darlington*, 11 U. C. C. P. 265, which followed the first named decision.

We therefore refuse the rule.

Rule refused. (*a*)

SLAGHT v. WEST ET AL.

Trespass—Seizure under fi. fa.—Evidence to connect execution plaintiffs.

In trespass for seizing goods it appeared that the defendants who had a claim against one B., instructed their attorney to collect it, and that the attorney having issued execution handed it to the sheriff, informing him that B. lived at Paris, where he kept a fruit store. The deputy sheriff said it would be a good time "to make a haul" (being near Christmas), to which the attorney answered that it would; and the seizure was then made. The plaintiff having claimed the goods, the attorney told the sheriff to hold possession, as they wished to make enquiries, and the sheriff did so until an interpleader order issued.

Held, affirming the judgment of the county court, that the defendants were bound by the acts and directions of their attorney, and that there was sufficient evidence to go to the jury to connect them with the seizure.

[Q. B., E. T., 1866.]

Appeal from the County Court of Brant.

The point presented was whether there was any evidence for the jury, on a motion for a nonsuit, to connect the defendants with a trespass to the plaintiff's house and goods.

Defendants were plaintiffs in an execution against one Beare. Their attorney gave the writ to the sheriff, and, as he swore, directed him that Beare lived in Paris, and was carrying on business, selling goods or fruit. A seizure was afterwards mads at a shop in Paris where Beare was apparently carrying on business. The plaintiff claimed the shop and goods to be his, and notified the sheriff, who informed the attorneys, and asked should he withdraw, or would they indemnify. They wanted a few days to make enquiry. He let it stand a few days, and they were still unprepared to give definite instructions. The sheriff asked should he withdraw, and understood from them he should not, as they wished to enquire further. He then interpleaded.

The deputy sheriff swore the sheriff had referred him to the attorneys before executing the writ. One of the attorneys told him that Beare had a fruit store in Paris. Witness said it would be a good time to make a haul; the attorney said it would. Witness went to Paris that day, and found Beare at the store. He denied owning anything. Witness left a man in possession, returned, and told the attorney what had taken place. The attorneys told him to "hang on," and they would enquire about it. Witness did hold on till an interpleader order was obtained.

The learned judge held that there was evidence to go to the jury, it being objected that defendants, the execution creditors, were not connected with the trespass, and no ratification by them of it was shewn, nor authority from them to issue execution. Leave was reserved to move for a nonsuit. The attorney swore somewhat differently from the sheriff and deputy.

It was left to the jary to say if the seizure of the plaintiff's goods was made by direction of the attorneys of the execution plaintiffs; and they were directed that if so the plaintiff should recover: that if the attorneys were instructed to collect the debt, the clients would be bound by their acts in issuing a *fi. fa.* and the instructions therewith.

The jury found for the plaintiff.

In next term a motion for nonsuit was made, wholly on the objections taken at the trial, and after argument the rule was discharged, the following judgment being given in the court below:

Jones, Co. J.—An attorney's warrant to prosecute an action continues in force (unless countermanded by his death or the act of the principal) for a year and a day after the judgment, for the purpose of having execution. 1 Tidd's Prac. 9th ed. p. 93. In *Bevins* v. *Hulme*, 15 M. & W. 96, the court said that the original retainer is to be presumed *primâ facie* to continue after judgment, so as to warrant the attorney in issuing execution within a year and a day, or afterwards in continuation of a former writ of execution issued within that time, and also to warrant his receiving the damages without a writ of execution.

In *Sweetnam* v. *Lemon et al.*, 13 U. C. C. P. 534, the court said that the duty of an attorney on a retainer to collect a claim does not necessarily terminate with the entry of judgment, but continues afterwards for the purpose of issuing execution; and if he undertakes to collect his client's money for him, he ought to make the judgment available for that purpose if he can.

Darling v. *Weller*, 22 U. C. Q. B., 363, decides that the ordinary retainer of an attorney does not bind him to register a judgment, nor perhaps to take any collateral proceeding on the judgment, such as examining the defendants, or garnishing debts, unless specially retained for the purpose, but the courts expressly recognize the liability of the attorney on such a retainer to resort to "all the ordinary execution processes."

In *Jarmain* v. *Hooper*, 6 M. & G. 827, which was an action of trespass against the sheriff and A. for seizing the plaintiff's goods, it was held that A., who was the execution plaintiff, was liable although he had not interfered in any way beyond giving instructions to his attorney to sue the defendant in the original action. The court said "The direction given by the attorney to the sheriff to seize, is a direction given by an agent within the scope of his authority. * * The attorney has the general conduct of the cause; he is the only person with whom the sheriff has communication; and, in taking a step essentially necessary for the benefit of the client, that is, for the obtaining the fruit of his judgment, we think he cannot be held to have acted beyond his authority, though he has miscarried in its execution. * * The client must stand to the consequences if he act inadvertently or ignorantly." See also *Collett* v. *Foster*, 2 H. & N. 358.

(*a*) See also *Ianson and the Corporation of Reach*, 19 U.C. Q. B. 591; *Standley and the Corporation of Vespra and Sunnidale*, 17 U. C. Q. B. 69; *Sheley and the Corporation of Windsor*, 23 U. C. Q. B. 569.—*Rep. Note.*