

C. L. Cham.]

DAIN V. GOSSAGE.

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make no difference—for they merely express what the law, in the construction of section 59, would imply, if those words were not there, and the enactment as to the May Courts must still be controlled by section 64, as being within “the other sections.”

I therefore feel forced, step by step, to the conclusion that the whole of section 59 is postponed till January, except the part as to the County Court in September, and that, consequently, there is no sitting of the County Court this May.

The notice of trial must be set aside, but without costs.

From this judgment the plaintiff appealed to

RICHARDS, C. J. :—I quite concur in the conclusion arrived at by Mr. Dalton in his able judgment. I have also had the opportunity of consulting the Hon. the Chief Justice of the Court of Common Pleas on the subject, and he authorises me to say that he is of opinion that that portion of the 59th Section of the Act for the better Administration of Justice which provides for the Sitting of the County Court of the County of York, on the second Tuesday in the month of May, does not come into force until the first day of January next.

If that portion of the Act is now in force, then the whole section would seem to be in force, and if that was the intention of the Legislature it would have been much easier to have said that the 59th section shall go into force forthwith, than merely that so much of it as relates to the Sitting of the County Court in September of every year, shall go into force forthwith. I do not think, however, there is any mistake or inconsistency in the matter. It is probable when the Statute was introduced it was intended to bring the whole Act into operation at once. On further consideration it was no doubt thought better to postpone the bringing into force the principal enactments until after the first of January next, and therefore it was quite proper to postpone, until that period, the operation of all the sections that were framed with a view to carrying out the main portions of the Bill.

One of the prominent features of the Act was a fourth sittings of the Courts of Assize and Nisi Prius and Oyer and Terminer for the County of York. That sitting was to be held between the end of Easter Term and the beginning of the long vacation in July. Now the end of Easter Term of this year is Saturday the 7th of June. The second Tuesday of the month of June will be the 10th of June. If the County Court were to sit for a fortnight it would cover

a portion of the same period for which the additional Assize Court would be sitting, under the new enactment for that purpose, if it had come in force. To prevent this, the change was provided for in the Bill of having the sittings of the County Court on the Second Tuesday of May instead of the second Tuesday in June. But as it was thought better that the additional sittings of the Assizes should not be held this year, therefore it was unnecessary to change the time for holding the County Court and the Court of General Sessions from June to May, and consequently that portion of section 59 which relates to the change need not be brought into operation until the rest of the Act was.

It was felt to be an evil that County Court cases were rushed in upon and swelled the dockets at the Assizes, particularly in the Fall, to the prejudice of the legitimate business belonging to the latter court. The County Court sittings in the County of York, for the trial of issues of fact, being in June, were not held again until December, a period of six months, and the Fall Assizes intervening, the evil referred to was felt to be pressing, and would be quite as much felt at the coming Fall Assizes as at any time. Principally to relieve this undue pressure of County Court business on the Assizes, the fourth sittings of the County Court and General Sessions was provided for in the Bill, and as no practical inconvenience would result from bringing that provision of the Statute into force, it would naturally occur to any one who knew of the evil complained of, that the pressure of business of the Fall Assizes of this year might be very much relieved by having a sitting of the County Court in September. If that idea was present to the mind of the framer of the sixty-fourth section he would be likely to make some provision in it for holding the September sittings of the County Court, and the words he has used shew that he did entertain the intention, and he seems to have used words to carry it out.

I see no reason why the simple, plain intent to be gathered from the 64th section, that only so much of the 59th section as relates to the sittings of the County Court in September should go into force immediately, and that the operation of the rest of the Act not brought into force immediately by the words of the 64th section, should be postponed until after the 1st January next.

I think the summons to set aside Mr. Dalton's order should be discharged. I do not understand the parties supporting the order ask or desire costs, and therefore I say nothing about costs.