the premises on which the defendant's goods have been seized puts in a claim for back rent alleged to be due to him.

Such claims, until the law of Interpleader was introduced into Division Courts, often placed Bailiffs in a most awkward position. Claims of this kind, grounded on fraud, were and are common enough, but *bona fide* claims have been and may every day be made involving fair questions as to right of property. The dilemma of both Bailiff and judgment creditor under the old law was this—When a claim was made, the bailiff naturally enough required an indemnity before proceeding to a sale; he had no sufficient means of finding out the character of a claim made; if the plaintiff refused an indemnity, he still had his remedy against the officer refusing to act, if it could be established that the goods seized were in fact the property of the defendant; but this might not be easily done. If the plaintiff gave an indemnity, he was exposed to the expensive process of a suit in the Superior Courts to determine the question; while the bailiff to whom an indemnity was refused was open to an action by one person for "not selling," and was threatened or in danger of another action by another person "if he did sell;" and there was no middle course for the Bailiff—he was compelled to take one risk or the other.*

Under the seventh section of the Division Courts Amendment Act (which superseded a similar provision in the Act of 1851), should a claim be made to goods, property, or security taken in execution or attached by third parties, those really interested in the matter, namely, the judgment creditor and the claimant, may be brought into Court by the Bailiff, in order that the question may be tried between them, and when the case is determined the Bailiff of course knows the course proper for him to pursue.

It is now proposed to consider claims by third parties to goods seized—claims of landlord to rent in arrear—and the practice or proceedings by way of Interpleader under the statute to determine such claims.

(*To be continued.*)

* Judge Gowan, writing in 1851, mentions a case in point. The bailiff of a Division Court acting under an execution, seized I believe, a cow and calf as the property of the defendant in the execution. A relative of the defendant laid claim to the property seized; the bailiff declined proceeding unless indemnified. The plaintiff, thinking the claim unfounded from certain suspicious circumstances in the matter, gave a bond of indemnity to the bailiff, who then sold under the execution. An action was then brought by the claimant against the bailiff to recover damages for the seizure; it was defended. When the record was carried down for trial, the parties and their witnesses were obliged to come to the county town—a considerable distance. A verdict was given in favour of the claimant for £6. 5s.; and no doubt the original plaintiff had to pay the damages and costs. That suit must have caused the parties a loss and outlay of upwards of £40. A similar claim could now be tried and adjudicated upon in the township where the parties reside, at the cost of 40s.

U. C. REPORTS.

GENERAL AND MUNICIPAL LAW.

QUEEN'S BENCH.

(*Reported by* C. Robinson, Esq., *Barrister-at-Law.*
(Hilary Term, 20th Vic.)

Davy and Russel v. Cameron.

Death of Plaintiff while rule nisi pending—Practice—C. L. P. A., sec. 248—Retrospective effect of.

A trial in ejectment was had in 1854, and a verdict found for the plaintiff. In the following term a rule *nisi* was obtained for a new trial, which, owing to the loss of some exhibits, was not argued until 1856, and was then discharged; in the meantime the plaintiff died, leaving a will by which he devised the land to certain persons in trust.

The court, on application, allowed judgment to be entered *nunc pro tunc*, and a suggestion to be entered of the death, leaving it to be afterwards determined whether the C. L. P. A., sec. 248, would apply retrospectively.

Ejectment, brought on the 14th of September, 1853, for part of the west half of lot No. 1, in the sixth concession of Madoc (about ten acres.)

This cause was tried in 1854, and a verdict rendered for the plaintiff, Colin Russell.

In Easter term, 1854, a rule *nisi* was granted for a new trial, or to restrain plaintiff from taking possession of any but a certain specified portion of the premises, which rule *nisi* was enlarged from time to time at the request of Russell's counsel, and was discharged in Trinity term, 1856—(See 14 U. C. R., 483.)

In Febuary, 1855, Russell died, and defendant had continued still in posession.

In Sepetember, 1856, a judge's summons was taken out and served on defendant, to shew cause why the legal representatives of Colin Russell should not be allowed to enter a suggestion of his death after verdict, having first made a will duly executed, whereby he devised all his real estate to his wife, and two others, as trustees; and why upon such suggestion the devisees in trust should not have execution, &c.

This summons was enlarged till Michaelmas term, that the application might be made to the court.

Crooks, in that term obtained a rule to shew cause why the devisees should not be at liberty to enter a suggestion on the roll of the death of Russell after verdict, and of the devise to them in trust; and why, on such suggestion being entered, the devisees should not be entitled to have execution upon the verdict, by delivery of possession to them: or why judgment should not be entered as of Easter term, 18 Vic., on the ground that the death of Colin Russell occurred during the pendency af the rule *nisi* against the verdict, and before judgment was given thereon.

Richards, shewed cause, and cited Vaughan v. Wilson, 4 Bing. N. C. 116; Freeman v. Tranah, 12 C. B. 406; Lawrence v. Hodgson, 1 Y. & J. 368; Doe dem. Taylor v. Crisp, 7 Dowl. 584; Fishmongers' Company v. Robertson, 3 C. B. 970.

Robinson, C. J.—I doubt whether we could properly make the order desired as to entering a suggestion. If the 248th clause of the Common Law Procedure Act could be applied in an action of ejectment commenced before that act was passed, which it is not necessary now to determine, I think it clearly could not be applied where as in this case, the plaintiff died before the passing of the act.

The suit, it is contended on the other side, had abated, the long delay (much more than two terms,) after the verdict, not being from any delay of the court in determining upon the application but from the delay af the parties in urging it; and whether it was an intentional delay of theirs, or occasioned by any accident which the court could not be responsible for, would make no difference, as the defendant contends, but that the action must be looked upon as abated for that judgment could not be entered in the name of the deceased plaintiff, as it might have been under the statute of 17 Car. II., ch. 8, if within two terms, or void after two terms, if the delay had been clearly the act of the court.

The circumstances which occasioned the delay in bringing on the rule *nisi* for argument, are stated in the report of the case.

When it was last before us (14 U. C. R., 483,) I entertained then a strong opinion that we could not properly allow judgment to be