may obtain a transcript and file it with the Clerk of the County Court, and he is then entitled to the same remedy as if the judgment had been originally obtained in that court. I should certainly not think that I was empowered as a Division Court judge to order the execution to issue under the 390th sec. of the Com. Law Pro. Act, notwithstanding that the 69th sec. of the Division Court Act provides, "that in any case not expressly provided for by that Act, or by existing rules, or by rules made under that Act, the county court judges may in their discretion adopt and apply the general principles of practice in the superior courts of common law in actions and proceedings in the Division Courts."

If the powers conferred on the Division Court Judges by the section just cited and the wording of the section as to jurisdiction, gives the Division Courts jurisdiction over detinue, (and I find it impossible to come to any other conclusion,) the subsequent conferring of additional powers on Superior and County Court judges and not giving them to Division Court judges, can hardly be construed to take away that jurisdiction.

A stronger argument against the existence of such jurisdiction is the silence of the rules and forms of the Division Court Act. No execution in detinue is provided by them, and the forms of claims though they make mention of trover leave out detinue. Now by the 66th section of the Division Court Act the rules and forms shall have the same force and effect as if they had been made and included in that Act, so that they should be read as if incorporated in that Act. They become then material in their bearing on the construction of the Act. But it would be too strict a construction to hold that such an omission would take away the power conferred generally by the Act, more especially when the statute seems to anticipate omissions of this nature by giving the judges powers to supply them by reference to the practice of the Superior Courts.

In *Taylor* v. *Addyman* 22 L. J. C. P. 94, where the words "debt" and "damages," as used in the English County Court Act, were held to include detinue, the objection of want of machinery was not allowed to prevail. It certainly would impair the utility of the Division Courts if plaintiffs can be allowed in all cases of detinue, no matter how small or trivial, to sue in other courts and heap costs on defendants. I cannot think that this was the intention of the Legislature.

I therefore am of opinion that this action is of the proper competence of the Division Court, and that the order should be made absolute for revising the taxation of costs.

Summons absolute.

CORRESPONDENCE.

SIMCOE, *25th April*, 1863.

SIRS,—I wish to know if Bailiffs of Division Courts are or are not entitled to a fee on executions when returned *nulla bona?*

Please look at "Act respecting Division Courts" of 1859, sections 52 and 53, cap. 19, and give your opinion and oblige,

Yours truly,

Eds. *Law Journal*, Barrie, C. W. N. PEGG, *Bailiff.*

[We think that they are not. There is nothing in the tariff of fees to warrant the charge, and we do not think there is enough in the above sections to authorize it in the absence of an express provision, although they seem to give some ground on which to rest an argument in its favor.

We are aware that the fee is allowed to be charged in some counties; but we think the better opinion is that it is unauthorized, and that for a special and very obvious reason it was not intended to be allowed.—EDS. L. J.]

UPPER CANADA REPORTS.

QUEEN'S BENCH.

(*Reported by* ROBERT A. HARRISON, Esq., *Barrister-at-Law*

IN THE MATTER OF SHERIFF DAVIDSON AND THE COURT OF QUARTER SESSIONS IN AND FOR THE COUNTY OF WATERLOO.

Jury Law—Con. Stat. U. C. cap. 31, secs. 84, 87, 105, 161, sub-secs. 1, 2, 4; sec. 164 sub-sec. 87, c. 84, sec. 161, sub-secs. 1, 2, 4; sec. 164—Sheriff's fees

Held, 1. That a sheriff is not entitled to be paid for certificates alleged to be furnished to persons under and pursuant to s. 105 of the Jury Act, without proving that the persons to whom the certificates were given requested the same

2. That no appeal lies from the decision of the Court of Quarter Sessions as to the amount which a sheriff is entitled to receive for mileage to serve jurors, and therefore that the court will not at the instance of the sheriff, grant a mandamus to compel that court to revise its decision in such a matter.

3. That the sheriff is entitled to be paid for copies of County Court Jury Panels furnished to the Superior Courts of Common Law for Upper Canada at Toronto

[Easter Term, 1863.]

In Easter Term, 1862, *R. A. Harrison* obtained a rule calling on the Court of Quarter Sessions in and for the county of Waterloo, on notice to their chairman, to shew cause why a mandamus should not issue commanding them properly to audit the accounts of the said sheriff, laid before said court at the sittings in October and March last, by allowing to the sheriff certain items deducted from the October account, viz:—

111 miles to serve jurors, at 8c.	$8 88
2 copies of juror's panels for Court of Assize	2.00
6 copies of same for Court of Quarter Sessions and County Court	6.00
125 certificates to jurors served, and certain items deducted from his account, rendered to said court in March, 1862	25 00
17 miles to serve jurors	1.36
6 copies of panels of grand and petit jurors for Quarter Sessions and County Court	6 00
21 certificates to grand jurors	4 20
	$53 44

And to order payment of the accounts, including said items, on the ground that the sheriff having performed the services is in law entitled to be paid for them, and that the disallowance thereof by said court is contrary to law, &c., &c.

In Michaelmas Term last *M. C. Cameron* shewed cause. He objected that the rule should be to the magistrates in Quarter Sessions and not to the court. That the court had audited and had acted in their discretion. That they had rejected the claim for mileage, considering the evidence insufficient. He filed several affidavits.

R. A. Harrison supported his rule.

HAGARTY, J.—I shall first notice the charges disallowed.

Of certificates of exemption to jurors.

Apart from any technical questions as to our right to review the decision of the Court of Quarter Sessions, I am not prepared to say with certainty that I think their view erroneous.

The whole question seems to turn on two clauses of the Juror's Act—

Sec. 105 says "Every juror who has attended, shall, upon application by him made to the sheriff or deputy sheriff before he departs from the place of trial, receive a certificate testifying his attendance, &c, and the sheriff or deputy sheriff shall give such certificate upon demand."

Sec. 161 provides a tariff of sheriff's charges "For the respective services performed by him under this act."

Sec. 5 "For every certificate given to any juror, of his having served (to evidence his exemption from serving again until his time for doing so returns in its course) the sum of 20 cents."

As I understand the disputed point it is this, the sheriff makes a certificate for every juryman, and has it ready and presents it to each or leaves it at the treasurer's office for each, whether the juryman asks for it or not. The Court of Quarter Sessions insist that unless the juryman expressly requires it, the sheriff should not prepare or charge for it.