The fifth objection is, that it does not appear that the rate is sufficient for the purposes of the by-law, according to the return of the financial year. We think some ground should be brought before us to shew that it is insufficient, and that, this not being done, we should assume its sufficiency. It was hardly meant, we suppose, to ask the court to make a calculation in order to determine the question.

The sixth objection is, that no special rate is directed to be levied in *each year* for the payment of the loan. The recital states, "that it will require the *annual rate* of 2½d. in the pound" to pay the interest and the principal, according to the requirements of the statutes: and the fourth section enacts, "that a special rate of 2½d. in the pound shall be raised for the purpose of paying the said sum of £10,000, with the interest thereon, and the proceeds of such special rate shall be applied solely to the payment of such debentures and the interest thereof, until the same be fully paid and discharged." The statute 14 & 15 Vic. makes the preamble to a by-law an essential part of it, and requires the rate to be raised annually to be recited. When this is done, and then the rate is afterwards formally imposed, and for the purpose of paying principal and interest of a loan which is to be discharged within twenty years, we think we may construe the whole together as imposing the special rate annually, though the word *annual* is not used in the section.

The seventh objection has been already answered in noticing the third.

On the whole we think the rule must be discharged with costs.

Rule discharged.

HOWLAND *v.* BROWN.

Contract for sale of flour f. o. b.—Liability of vendee for warehouse charges.

[13 B. R. Rep. 199.]

One E. in February, sold defendant certain flour to be delivered in May following, f. o. b. (meaning free on board the vessels which were to take it from Hamilton.) The flour was delivered in May, but defendant had no vessels then ready, and E. stored it with the plaintiff subject to the defendant's order, paying all charges on it up to the end of May.

Held, that the defendant was liable to the plaintiff for subsequent warehouse charges up to the time of shipment.

This was an appeal from the County Court of the county of Wentworth. It was an action of debt brought to recover fees for storage of certain goods. *Plea—Nunquam indebitatus.*

The plaintiff below obtained a verdict for £22 1s. 8d., subject to the opinion of the court. Upon argument of the points reserved judgment was given for the plaintiff, and from this decision the defendant appealed

Springer, for the appellant, cited Wilmot *v.* Wadsworth, 10 U. C. R. 594; Proudfoot *v.* Anderson, 7 U. C. R. 573; Bentall *v.* Burn, 3 B. & C. 426; 5 D. & R. 284, S. C.; Farina *v.* Home, 16 M. &. W. 1. 20, 20 Eng. Rep. 524; Story on Bailments, sec. 589; Beckett *v.* Urquhart, 1 U. C. R. 188; James *v.* Griffin, 1 M. & W. 26; 2 M. W. 633, S. C.

The facts of the case were sufficiently stated in the judgment.

BURNS, J., delivered the judgment of the court.

We are at a loss to see how any doubt could be entertained in this case. On the 2nd of February, 1854, Mr. Ewart, through a broker, sold 4,000 barrels of flour to the appellant, to be delivered in May following, f. o. b., meaning free on board the vessels which were to transport it from Hamilton. The contract was to pay in cash £1,000, and £3,500 by promissory notes payable at the time the flour was to be delivered. The same day the appellant paid £1,000 in cash, and gave his promissory notes according to the contract. The flour was delivered according to contract at Hamilton in the month of May, but the appellant had not vessels there to put the same on board. It was proved that the flour was put into the respondent's warehouse subject to the appellant's orders, and Mr. Ewart paid all charges upon it up to the 31st of May. The flour was not all shipped until early in August. The argument for the appellant, that he is not liable for the storage subsequent to the 31st of May, and that Mr. Ewart is, if storage can be collected from any one, proceeds upon the idea that the contract of Mr. Ewart is not complete until the flour is actually on board the vessel, and that it lay in the respondent's warehouse subject to Mr. Ewart's order. That question depends upon the construction of the bought and sold note, and not upon the broker's opinion of what was or was not a reasonable time for the flour to remain in store. The bought and sold note is that the whole quantity, dividing it into parcels, shall be deliverable in the first, second, and last week in May, free on board. The seller, Mr. Ewart, had accomplished all he could do, and had the flour ready to be put on board by the 31st of May free of charge, for he had paid all charges to that time. Then at whose risk was the flour after the 31st of May? The appellant was bound to furnish vessels ready to receive the flour by the time that Mr. Ewart was bound by the contract to deliver. The obligation to receive is mutual with the obligation to deliver: and if the seller be ready to deliver, and does all he can for the purpose, but the buyer is not ready to receive, the risk must remain with him. The question depends simply upon the construction of the bought and sold note, and upon the evidence, whether Mr. Ewart had complied with his part of the contract; and we must say we entertain no doubt he did comply with his contract, and that the flour remained in the warehouse at the risk of the appellant after the delivery there and charges paid. The property being that of the appellant was liable to the charges of the warehouse keeper after the same became appellant's property.

Appeal dismissed, with costs.

CHANCERY.

ABRAHAM *v.* SHEPHERD.

Practice—County Courts.

A defendant on moving to dissolve an injunction issued from a County Court, is not bound to have the proceedings returned to the Registrar, from the County Court office.

[4 U. C. C. Rep. 260.]

This was a suit commenced in the County Court of the county of York, to restrain waste alleged to have been committed on lands of the plaintiff—and a motion was now made to dissolve the injunction so issued, by

Mr. *Morphy*, for the defendant.

Mr. *R. Cooper*, contra, objected that there was nothing before the court to warrant them taking cognizance of this matter—the claim and other papers still remaining on the files of the county court, which it was the duty of the party moving to have had returned to this court.

The court, however, thought that a defendant is entitled to make this motion, without having the papers transmitted to this court; that was a duty incumbent on the plaintiff, who has been regularly served with notice of this application.

STEVENSON *v.* HUFFMAN.

Practice—County Court.

Where a plaintiff in an injunction suit, instituted in the County Court, desires to extend the injunction, it is his duty to have the pleadings and papers in the cause transmitted to this court before the motion is heard.

A notice of motion given for a day which is not a regular court day, unless leave of the court be obtained for that purpose, is a void proceeding, and the party served need not attend thereon.

[4 U. C. C. Rep. 318.]

This was a motion to extend an injunction issued from the County Court of the United Counties of Frontenac, Lennox and Addington, the period for which it had been granted by the judge expiring either on this or the following day. The notice of motion had been served for the Saturday preceding, the court having appointed a special sitting throughout the week