

suppose an executor takes out probate for the county of York, for instance; can he sell real estate in the county of Ontario, or in any other county in Upper Canada, supposing his testator died in the State of New York, and had property in both or other counties, *real* and *personal*? An answer through your journal will oblige

Your obedient servant,
A LAW STUDENT.

Ottawa, March 21, 1864.

[The power of an executor to sell real estate is derived from the will of his testator. If the will does not give him the power, the probate certainly cannot do so. Probate in general has nothing whatever to do with realty. An executor having power to sell under the will, can, we presume, exercise the power without obtaining probate of the will. An administrator has no such power, for the reason that there is no will giving him the power. The Surrogate Court cannot give the power either to executor or administrator to interfere with realty.]—Eds. L. J.

Master and servant—Wages—Warrant—Exemption Act.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—You will confer a favor, in your next, by answering the following:

A. sues B. for three months' wages, before a magistrate, and gets judgment. B. has been sold out previously, under two executions from a Division Court, and everything sold but one cow, which the Exemption Act protects.

Query—Can an execution issued by the magistrate sell the only cow left by the bailiff, or is said cow protected from seizure and sale under the 5th section of the 24th Victoria, chapter 25, under a magistrates execution, or not?

Yours, AN OLD SUBSCRIBER.

[The question put by our correspondent is one of much difficulty. If we look upon a proceeding before a magistrate, at the instance of a servant, founded on a complaint of non-payment of wages, as in the nature of civil process for the recovery of a debt, the Exemption Act might be held to apply. But certainly not so if looked upon as a *quasi* criminal proceeding. We cannot undertake to say which view would prevail with the courts, for as yet the point has not, so far as we know, received a judicial determination. We have not at present the time necessary to devote to the consideration of the question in order to enable us, in the absence of decided cases to draw our own conclusions.—Eds. L. J.]

Uncertificated Attorney in Upper Canada—Right to recover fees in County Courts.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—Is an attorney who has neglected to take out his certificate for two years, and who, during that time, has conducted suits in the county courts, entitled to the fees and charges as an attorney in such suits; and is the only remedy against him in such cases a suit for the £10 penalty mentioned in the Act relating to Attorneys in Upper Canada?

According to the English Act, attorneys who have neglected to take out their certificates are not entitled to any fees. Does the Upper Canada Act repeal or annul that provision of the English Act?

Yours truly, A. B.

Hamilton, March 28, 1864.

[By our act it is made the duty of every practising attorney or solicitor annually in Michaelmas Term to pay to the Treasurer of the Law Society certain "certificate fees," and it is thereupon made the duty of the Secretary to deliver to the attorney or solicitor one or more annual certificates (Con. Stat. U. C. cap. 35 s. 49).

If the attorney or solicitor omit taking out the annual certificates within the time limited, he can only obtain them on payment of additional sums of money by way of penalty (sec. 56).

If any attorney or solicitor practices in any of the courts of Queen's Bench, Chancery or Common Pleas without such certificates, he is made liable to a forfeiture of \$40, to be paid to the Treasurer of the Law Society for the uses thereof (s. 57).

Now the English Act goes further, for it provides not only for the issuing of annual certificates to attorneys and solicitors but in express terms declares "that no person who shall sue, prosecute, defend or carry on any action or suit, or any proceedings in any of the courts aforesaid, without having previously obtained a stamped certificate, which shall be then in force, shall be capable of maintaining any action or suit at law or in equity for the recovery of any fee, reward or disbursement for or in respect of any business, matter or thing done by him as an attorney or solicitor as aforesaid, while he shall have been without such certificate as last aforesaid" (6 & 7 Vic. cap. 73 s. 26).

We feel great difficulty in saying that in Upper Canada, in the absence of such a provision, an attorney or solicitor who omits to take out his annual certificates is incapable of recovering his fees. The forfeitures of \$40 would appear to us as at present advised, to be the only penalty; and it is worthy of remark that it is recoverable where the attorney or solicitor practices without certificates in the Queen's Bench, Common Pleas or Chancery, and not where he practises in County Courts or other courts than there specifically named.]—Eds. L. J.

MONTHLY REPERTORY.

COMMON LAW.

C. P. COOK AND ANOTHER V. LISTER.
Bill of exchange—Part payment to indorsee by drawer—Action against acceptor—Reduction of damages.

Although part payment to the indorsee by the drawer of a bill of exchange is, in general, no answer to an action by the indorsee against the acceptor for the whole sum, yet, in the case of an accommodation bill, or (where the bill is not an accommodation bill) where the state of accounts between the acceptor and drawer is such that the drawer is really the debtor of the acceptor, such part payment by the drawer shall be taken in reduction of damages, and if sufficient money be paid into court to cover the damages so reduced the defendant shall succeed.