for rent of some land before then owned by him in right of his wife.

In the argument, I understand, it was admitted that there could not, under the statute, be any set off. The 134th section of the Division Courts Act, Con. Stat. U. C. ch. 19. enacts, "If there be cross judgments between the parties, the party only who has obtained judgment for the larger sum shall have execution, and then only for the balance over the smaller judgment, and satisfaction for the remainder, and also satisfaction on the judgment for the smaller sum shall be entered; and if both sums are equal, satisfaction shall be entered upon both judgments. There is nothing in the affidavits showing that satisfaction has been actually entered on the judgment in favor of Linden and wife.

No question was raised in argument as to Mrs. Linden coming within the first section of Con. Stat U. C. ch 73, for the protection of married women. Then, being a woman who married since the 4th May, 1859, she acquired the property from whence the rent issued which was sued for in the division court from her father by inheritance, and if the rent be considered personal property, it has been acquired by her after marriage (and was not received by her from her husband during coverture). She has under that statute the right to have, hold, and enjoy it free from the debts and obligations of her husband, and from his control or disposition without her consent, in as full and ample a manner as if she continued sole and unmarried.

In the action to recover the rent her husband's name was joined for conformity; and without her consent the judgment or demand is no more liable to be set off or applied to pay another judgment or demand against her husband, than it could be to satisfy the judgment of an entire stranger, and this we understand to be admitted on the argument. If this be so then the learned deputy judge of the county court had no jurisdiction in the matter.

It will not be pretended for a moment that he had any authority or jurisdiction, under the 134th section of the Division Courts Act, to set off a judgment of Mr. Buchanan against the uncle or grandfather of Mrs. Linden, if he had such a judgment, to satisfy Mrs. Linden's judgment, which stands in the name of herself and husband against him; and if he had no jurisdiction in such a case, he has none in the case before us, as we understand the facts.

If this be so, then the order he gave the clerk is inoperative and of no avail, and Mrs. Linden is entitled to have a mandamus to obtain execution to recover the amount of her judgment.

The case of *The Queen* v. *Fletcher* (2 E. & B. 279), referred to by Mr. Osler, seems to shew that the mandamus to issue the execution is properly directed to the clerk and not to the judge, when application has been made to the judge requesting him to order the clerk to issue execution, and when the clerk has himself been applied to issue execution.

We think therefore the rule should go to the clerk, but if within a week he issues the execution as prayed for, the rule will not be drawn up We give no costs.

*Rule absolute.*

## YEARKE, APPELLANT, AND BINGLEMAN, RESPONDENT.

*Quarter Sessions—Perverse verdict—New trial—Mandamus.*

Where a conviction has been affirmed by a jury on appeal to the quarter sessions, that court has no authority to grant a new trial.

*Quære*, whether when such verdict has been rendered against the express direction of the chairman, that court would be bound, or should be compelled by mandamus, to enforce the conviction so affirmed.

[23 U. C. Q. B. 551.]

On the 25th May, 1868, at Charlotteville, in the county of Norfolk, Norman Yearke and John Nelson were convicted before John H. Spencer, a justice of the peace, for a trespass, on the land of John Bingleman, being lot nine in the sixth concession of Charlotteville, between the first of January and the last day of February, by falling timber from No. 8 upon his land and leaving the tops thereon, also cutting three pine trees of his timber; and he adjudged them for the offence to pay $10 for compensation to Bingleman, and also the further sum of $1 cash as penalty, to be paid and applied according to law, and also to pay the said John Bingleman the sum of $6 75 for his costs; and if the said several sums were not paid before the 1st of June, he ordered the same to be levied by distress and sale of the goods and chattels of Yearke and Nelson, and in default of sufficient distress he ordered them to be imprisoned in the common gaol of the county of Norfolk, to be kept at hard labour for the space of twenty days, unless the said several sums, and all costs and charges of the said distress and of the commitment and conveying them to gaol, should be sooner paid.

Against this conviction Yearke appealed to the next court of general quarter sessions of the peace, held on the 9th of June.

The matter came on to be heard before the court, and a jury was called and sworn, and the respondent entered on his case. It was proved, on cross-examination of the respondent's first witness, that the land on which the alleged trespass was committed was wholly unenclosed. On this the appellant's counsel submitted to the court, and the court held, that the conviction was bad on that ground. The respondent's counsel declined to submit to the ruling of the court, and called witnesses to prove the alleged trespasses and the damage done. The appellant's counsel, after the ruling of the court, called no evidence. The respondent's counsel then addressed the jury, and the appellant's counsel stated he would not offer any arguments to the jury, as the court had decided the conviction was bad. The court then charged the jury, that as it was proved the land in question was wholly unenclosed, they should quash the conviction. The jury retired and brought in a verdict for the respondent, with $15 damages. The court thereupon declined to receive the verdict, and directed the jury that their verdict must be either affirming or quashing the conviction, and as the court had already ruled that the conviction was bad on the grounds stated, it was their duty to quash it. The jury nevertheless rendered their verdict affirming the conviction.

Immediately after the rendering of the verdict and before any order of the court was made in the premises, the appellant's counsel moved for a new trial, at the same sessions, in presence of the respondent's counsel, which after due con-