were so in possession of the execution debtor, distrained and sold them for rent due to him by the debtor, in an action of Trover by the Sheriff against the landlord:—*Held*, That the Sheriff had not, at the time of the distress, such a possession of the goods as precluded the landlord from his distress for rent,—that Trover could not be maintained, if the goods were rightfully distrained, and that under the circumstances, the only remedy of the Sheriff was against the parties who failed to deliver the goods to him according to contract when thereto requested.—*McIntyre, Sheriff, &c.*, v *Stata et al.*, 4 U. C. C. P. Rep. 248.

A Sheriff having seized the goods of a debtor, under an execution, took a bond for the delivery thereof when required by the Sheriff, and allowed the debtor to remain in possession of the goods and carry on his business as before the seizure: and while the debtor so continued in possession, and after the return day of the writ had expired, a second execution at the suit of another creditor was received by the Sheriff, to which he returned *nulla bona*:—*Held*, in an action against the Sheriff for a false return, that the second writ took precedence of the first and bound the goods, and that therefore the Sheriff was liable.—*Castle* v. *Ruttan, Sheriff*, &c., 4 U. C. C. P. Rep. 252.

The above cases would decide the question put relative to a Division Court Bailiff; the Sheriff could take no action against the Bailiff for the recovery of the goods: but must have recourse on the security he would have taken for their production from the debtor.

Proposed Abbreviations.—In order to give as much reading matter as possible, the following abbreviations will be found in our columns after the present issue. Our contributors and correspondents we leave to follow their own inclination. We trust they will see the great economy in room these abbreviations will secure:—D. C. for "Division Court," D. C. Act for "The Upper Canada Division Courts Act of 1850,"—D.C.E. Act for "The Upper Canada Division Courts Extension Act for 1853,"—Co. for "County,"—Q.B. for "Queen's Bench,"—C.P. for "Common Pleas,"—Plt. for "Plaintiff,"—Dft for "Defendant,"—J.P. for "Justice of the Peace."

DIVISION COURTS.

(Reports in relation to)

ENGLISH CASES.

Q.B. Carter v. Smith. *Jan.* 30.

County Court—Power of Judge in matters of Practice—New trial—Prohibition—Rules of Practice.

By sec. 89 *of* 9 *&* 10 *Vic.* c. 95, *the Judge of a County Court has "in every case the power, if he shall think fit, to order a new trial, upon such terms as he shall think reasonable." By the* 141*st Rule of Practice "the party intending to apply must,* 7 *clear days before the holding of the Court at which the application is to be made, deliver a notice in writing" to the Clerk and the opposite party; and unless the application be made as the rule directed "no subsequent application for that purpose can be made, unless by leave of the Judge."*

The defendant not having given the 7 *days notice as required by the* 141*st Rule, applied at a subsequent Court to the Judge to grant a new trial, which application was granted. The Court refused to make absolute a rule for a Prohibition to restrain the Judge from granting a new trial on the ground that it was a matter of Practice on which he might exercise his discretion.*

The action was brought against an undergraduate of Oxford for £23, the items consisting of hunting whip, studs, money lent, &c. There was a plea of infancy. The jury considered the goods necessaries, and found a verdict for plaintiff. At the next court defendant applied for a new trial: no notice of his intention to apply had been given. Plaintiff objected to the application being made, but the Judge held that under the 141st Rule he had discretion to waive the objection, which he exercised, and granted a new trial. A rule had been obtained for a prohibition to restrain the Judge from proceeding any further in the matter.

Griffith shewed cause.—It is submitted that it is for the Judge in his discretion to waive the rule if he think fit. He has a jurisdiction under Rule 141 to do so. This is a mere matter of practice, and this Court will not interfere with the County Court Judge in matters of practice.

Cripps, in support of the rule.—If that rule may be dispensed with, the successful party in an action in the County Court will never be safe; a new trial may be applied for at any time. [Lord Campbell, C.J., it is in the discretion of the Judge to grant it or not.]

Lord Campbell, C.J.—I am of opinion that no ground has been shewn for granting this prohibition. A discretion is vested in the Judges of the County Courts. By sec. 89 of 9 & 10 Vic. c. 95 the Judge has "in every case the power, if he shall think fit, to order a new trial upon such terms as he shall think reasonable, and in the meantime to stay proceedings."

Then looking at rule 141, if the application for a new trial be not made as therein directed, "no subsequent application can be made *unless by leave of the Judge*, and on such terms as he shall think fit." If, then, reasons satisfactory to him be adduced why he should, notwithstanding the want of proper notice, grant a new trial, it would be monstrous to say that he had not the power to do so. It seems quite analogous to the rules guiding the Superior Courts, which are very useful as general rules, but in special circumstances the Courts have the power to dispense with them. This is a matter of practice. The Judge of the County Court had jurisdiction, and in the exercise of his discretion he has granted a new trial.

Coleridge, J.—I should have been very sorry to have been compelled to make this rule absolute for a prohibition, because the argument for it is founded on a very strict construction of rule 141. If Mr. Cripps' argument be good for one particular, it is good for all. Suppose through some inevitable accident, or by the misconduct of the other side, notice had not been given in time, or what was necessary had not been done, could it be said that the Judge was so tied by the rule that he could not dispense with the notice and could not grant a new trial?

Wightman, J.—I am entirely of the same opinion. Under the 89th sec. of 9 & 10 Vic. c. 95, the Judge had a general