An agent is not liable on a contract, which he makes in his representative capacity, provided he do not personally contract or expressly pledge his own credit; and provided he do not so far exceed his powers as to render his principal irresponsible. If a person contract as an agent for a third party having in fact no authority to do so, he may be sued personallly—but then it must be shown that he acted without authority.

Delivery to a minor.—The father of an infant (a person under the age of twenty-one years) to whom goods are sold, is only liable when an actual authority from him to his child is proved, or circumstances appear from which such an authority can be implied; or there is a subsequent recognition of the claim. Even the father of an illegitimate child may be liable on an implied contract to pay for necessaries supplied for the child, if he adopted it by taking it home.

ON THE DUTIES OF MAGISTRATES.

SKETCHES BY A J. P.

(*Continued from page* 202.)

The Assertion of a Claim of Right.

In the course of the hearing it may appear that the act complained of has been committed in the *bonâ fide* assertion of a claim of right; and where this is the case, it may be laid down as a general rule that the jurisdiction of the Justices will be ousted, and they should dismiss the information, leaving the party complaining to such other remedies as the law may have provided. For a *bonâ fide* claim of right, by the principle of common law, and also by express enactment, usually inserted in modern statutes relating to the summary trial of offences, operates so as to disable Justices from proceeding.

In reference to the assertion of right, however, the Justices should not only consider whether the case is one in which, from its nature, a claim of right is admissible, or operates as a defence—but also, whether or not it is made *bonâ fide*, or is merely colourable; for if it be made in a case in which it clearly is not applicable, or does not amount, even if well founded, to a legal defence; or is merely colourable without any legal foundation, they should disregard it and proceed with the case.

The claim of right may be set up at any stage of the proceedings; when advanced as a defence, it will be the duty of the Justices to enter into the case so far only as to satisfy themselves whether the claim is either substantial or unfounded; and in this investigation their object will be alone to ascertain that the claim is a reasonable one, not that it is one capable of being ultimately successfully maintained.

It is no proof of a *bonâ fide* claim subsisting that several persons, other than the individual charged, had committed similar trespasses, using the same colour of right as that which he professed to rely on, and that the complainants had obtained injunctions from the Court of Chancery against such parties; nor in a case where a particular statute exempts from the penalty any person acting under a reasonable supposition of *right*, is it sufficient for the accused to *state merely* that he so acted.

The class of cases in which a claim of right can be set up are for the most part confined to informations for trespass and assault which sometimes involve a question of title to property. When such a question is involved, the Justices should at once abstain from further proceeding in the case, and leave the parties to some other course of proceeding, it being a maxim of invariable application as regards summary proceedings before Justices, that whenever the title to property is in question the right to adjudicate does not exist.[1]

[No portion of the "Manual on the Office and Duties of Bailiffs in the Division Courts," owing to the pressing engagements of the writer, will appear in this number. We will find room in the next number for a double portion.—ED. U. C. L. J.]

U. C. REPORTS.

GENERAL AND MUNICIPAL LAW.

CLARKE v. EASTON.

(Easter Term, 19 Vic.)

(*Reported by C. Robinson, Esq., Barrister-at-Law.*)

Plea, that plaintiff's money seized in defendant's hands under execution from Division Court—13 & 14 Vic., cap. 53, sec. 89—Construction of.

Defendant had taken a conveyance from the plaintiff of certain timber under an agreement, by which he was authorised to sell it and receive the proceeds of such sale "in his own name, or otherwise, as he should think proper," and after making certain deductions allowed, he was to pay to the plaintiff any balance of the purchase money which should remain in his hands.

To an action by the plaintiff upon this agreement for monies alleged to be due him, defendant pleaded that after the sale of the timber, and before this suit, and while the monies mentioned in the declaration remained in defendant's hands, they were seized by a bailiff of a division court, under an execution issued from that court against the plaintiff, at the suit of one O.

Held on demurrer, plea bad, as it imported nothing more than that defendant was *indebted* to the plaintiff in a certain sum, and such a claim could not be seized under 13 & 14 Vic., cap. 53, sec. 89.

Quære, if defendant had set out the amount of plaintiff's money in his hands, and averred that this sum remained separate and apart from his own, for the plaintiff, when it was seized—whether that would have been a good defence.

[14 Q. B. R. 251.]

Declaration—That the plaintiff, by indenture, sold and conveyed to defendant all his elm timber on the river Moira, marked "C. K.": that it was agreed that defendant should advance a certain sum on the execution of said indenture, &c.; and also that the said defendant should have the uncontrollable and perfect right to sell the said timber to such person or person as he should think fit, and to take and receive the proceeds of such sale in his own name or otherwise, as he should think proper; also, that the said defendant should have the right, on

[1] See Paley on Convictions, foot note, 87; R. v. Wrotherley, 1 B. & Ad. 488; R. v. Hudson et al, 9 A. & E., 704; Pyle v. Pollard, 10 Q. B., 901.