

We have already decided that the Legislature intended that the appeal should be disposed of at such Sessions, and we think it is quite clear from the language of the section that the matter of costs should be determined at the same time. Various reasons might be suggested why it should be so, if the language itself was not clear. The justices who preside at Quarter Sessions, with the exception of the chairman, are seldom the same. In the present case no one of the four who were present at the March Sessions, and heard the appeal, were present at the June Sessions, when the costs were disposed of.

No doubt the Sessions has a general power to adjourn; but, as said by Cockburn, C. J., in *Bowman v. Blyth*, in the Exchequer Chamber, on appeal (7 E. & B. 47), "we are unanimous in thinking that the decision of the Court of Queen's Bench in this case ought to be affirmed. Their judgment proceeds on the ground that, though the Court of Quarter Sessions have in general power of adjournment, yet, when an act giving any particular jurisdiction plainly intimates an intention that such particular jurisdiction is to be exercised by one particular Sessions, that Sessions cannot adjourn it to another." And Martin, B., in the same case, says, "I will only add that, though I do not question that, in construing acts, language seemingly positive may sometimes be read as directory, yet such a construction is not to be lightly adopted; and never when, as in this case, it would really be to make a new law, instead of that made by the Legislature."

We are therefore of opinion that this rule should be made absolute; but as, as in the case of *McCumber and Doyle*, no objection appears to have been made when the adjournment of the appeal was ordered, there will be no costs.

Rule absolute.

CAMPBELL V. THE CORPORATION OF YORK & PEEL.

York and Peel—Services of Registrar of Peel under 29 Vic. cap. 24, secs. 26, 33—Joint liability of Counties after separation—Pleading—Evidence.

Held, as decided upon demurrer to the declaration, 26 U.C. R. 635, that the Corporations of York and Peel were jointly liable to the plaintiff, as Registrar of Peel, for services rendered by him under secs. 26 and 33 of the Registry Act, before the separation of the counties.

Held also, that a demand of payment on the Treasurer of the Counties, and refusal by him, was sufficiently shown by the evidence set out below; and that the Inspector's certificate under sec. 70, though given after the separation, was sufficient, it not being a condition precedent to the right of action on such refusal.

Held also, no objection that the memorials copied by the plaintiff had been received by his predecessor, not by himself.

[Q. B., M. T., 31 Vic., 1867.]

Declaration, that the plaintiff, before and since the 29 Vic. cap. 24, was and is Registrar of the County of Peel, and before its separation from York a separate registry office was before and after the act established in Peel, and the plaintiff after the act, and before the separation, performed certain duties under sections 26 and 33 of said Act, the fees for which duties, according to said act, amounted, under sec. 26, to \$963 61, and under section 33 to \$2,000, which fees were duly certified by the Inspector of Registry Offices: that such duties were required by the act, and were to be performed by the plaintiff as Registrar under these sections; and after he had performed the duties, the plaintiff did, before action, request the proper treasurer to pay, &c., but he

refused: that Peel was afterwards, and before this action, separated; whereby an action hath accrued against the defendants.

Plea, by the defendants separately, never indebted.

The case was tried at Brampton, before Adam Wilson, J.

A certificate by the Inspector of Registry Offices for services under sec. 33, was put in for \$2,000, and another, under sec. 26, for \$963 61.

Several letters were put in evidence, passing between the plaintiff and the Treasurer of York and Peel.

A witness proved that he went with an order from the plaintiff for the two sums to the office of the Treasurer of York and Peel, and spoke to a person he supposed was the Treasurer, who referred him to the Warden, who referred him to their legal advisers, by one of whom he was told that the County of York did not intend to pay the account at all. This was in February, 1867. The Treasurer said he thought that Peel should pay.

For the defence, *M. C. Cameron*, Q. C., for the County of York, moved for a nonsuit, on the ground that there was no sufficient proof of the account, or of the time the services were rendered: that the certificate does not refer to York more than to Peel, and does not refer to particular services rendered: that there was no sufficient request, under the statute, to pay: that this is a joint action, and no demand is shown on the Treasurer of Peel: that the County of York was not liable: that sections 68 and 70 of the Registry Act, 29 Vic. cap. 24, show that Peel is the County liable: that the fees are to be recovered from the County in which the separate Registry Office is: that Peel had been set off when the demand was made: that the lands lie there, and it had a separate Treasurer: that the plaintiff had not shown that he received any memorials from any other County, of which he was to make copies, and till then he had no duty to perform.

The plaintiff was then called as a witness. He said he had been Registrar over three years: that the memorials he copied were not received by him, but by his predecessor: that he had received about £560 from the Treasurer of the United Counties for services under sec. 26: that he began copying in November, 1865: that he had been paid all his accounts rendered of that class except \$963; he had got nothing on account of the abstract indices, there was no other formal request to pay than appeared by the letters and accounts put in; and nothing received on the two accounts sued. In August, 1866, he rendered the account to the Treasurer for \$963 61. In December he rendered the account for \$2,000. The person he saw in the Treasurer's office said he had no authority to pay it. No demand was made on Peel since the separation excepting the letter (which letter was not among the exhibits).

The defendants, the County of York, then objected that as the plaintiff had not received the memorials, he was not an officer to do the work, &c.

It was agreed that a verdict should be taken for the plaintiff, with leave to the defendants to move to enter it for them, or for a nonsuit.

M. C. Cameron, Q. C., obtained a rule on the leave reserved, to which *James Paterson* showed cause.