

as coppers, kettles, and the like, may be sold. [2] Also, that growing crops, grain, and other articles raised by the industry of man, may be taken in execution, but that things which are produced without the labour of man cannot—neither can clover or artificial grass, growing under grain, &c. Where the tenant continues in possession after forfeiture of his lease, or is otherwise a trespasser, the crops cannot be seized under a *Fi. Fa.* against him. [3]

U. C. REPORTS.

GENERAL AND MUNICIPAL LAW.

IN THE MATTER OF ARBITRATION BETWEEN THE MUNICIPAL COUNCIL OF THE COUNTY OF MIDDLESEX AND THE MAYOR, ALDERMEN AND COMMONALTY OF THE CITY OF LONDON.

(Reported by C. Robinson, Esq., Barrister-at-Law.)
(Trinity Term, 20 Vic.)

Arbitration on erection of town into city—12 Vic. cap. 73, sec. 15; 12 Vic. cap. 81, sec. 290; 11 & 13 Vic. cap. 103, sec. 25—*Retrospective effect given to award*—*Limiting its continuance*—*Construction of 11 Vic. cap. 81, sec. 209.*

Arbitrators were appointed by articles of agreement, dated 28th of December, 1855, to settle certain differences then pending between the city of London and the county of Middlesex, respecting the compensation to be paid by the City to the County for the use of the County court-house and gaol, and concerning certain financial affairs then depending between the said municipalities. On the same day they awarded that the stock held by the County in certain railways mentioned should be divided in the proportion of one-fifth to be transferred to the City, the remaining four-fifths to be long still to the County. 2nd—That the City should pay the County £2,675 on account of the county roads, and should keep such roads in repair within the city limits. 3rd—That the City should pay the County £1,900 in full for their portion of the County debt. 4th—That in future each of the municipalities should pay the expense of all prisoners committed to the County gaol by each of them respectively, and the portion of such expense incurred by the City should be paid over by them in January of each year. 5th—That in future the City should pay the County one-third of all incidental expenses connected with the County court-house and gaol, including repairs and insurances, together with one-third of all expenses connected with the administration of justice not paid by government, such payment to be made in the month of January in each year. 6th—That the City should pay the County the sums mentioned in the 1st, 2nd and 3rd clauses, with interest, in twelve months from the 1st of January, 1856, except that the City Council should pay their share of the railway stock at the time the county debentures given therefor should become payable. 7th—That the award should take effect on the 1st of January, 1855, and remain in force until the 1st of January, 1860.

Held:—

That the giving to the award a retrospective effect to the 1st of January, 1855, being the time when London was declared a city, was not objectionable, but proper:

That the arbitrators had authority to give time for payment, as in the 6th clause: That the limiting the continuance of the award to the 1st of January, 1860, was inconsistent with the 12 Vic. cap. 81, sec. 260, and rendered the award void as to the 4th and 5th clauses, respecting the court-house and gaol:

That the 4th clause of the award was also bad, because the act directs that the arbitrators shall settle a sum to be paid, and does not authorize a ratable division of the expenses:

That the 4th and 5th clauses might be separated from the rest, and the award set aside as to them only.

(11 Q. B. R., 331.)

On the 28th of December 1855, Thomas Moyle, Thomas S. Shenston, and William Barker, Esquires, made an award, in which it was recited that by articles of agreement made on that day between the Municipal Council of the County of Middlesex and the Mayor, Aldermen, and Commonalty of the City of London, (in Upper Canada) it was recited that certain differences had arisen, and were then pending between the said municipalities respecting the amount to be paid by the City of London to the County of Middlesex as compensation

for the use of the court-house and gaol belonging to the county of Middlesex, and also concerning certain financial affairs then pending between the said municipalities, and that it had been agreed to refer such differences to the arbitration of Thomas Moyle, appointed on behalf of the county of Middlesex, and William Barker on behalf of the City of London, with power to them to appoint a third arbitrator before proceeding upon the said reference; the award to be made by the said arbitrators, or any two of them, under their hands and seals, ready to be delivered to the parties in difference, or either of them, on or before the first day of January then next; and that before entering upon the arbitration, the two arbitrators named had duly appointed Thomas S. Shenston to be the third arbitrator. And on the same 28th of December, 1855, the three arbitrators made their award as follows, of and concerning the said premises submitted to them:

1st—They awarded that the stock held by the Municipal Council of the County of Middlesex in the Great Western Railway Company, and in the London and Port Stanley Railway Company, should be divided in the proportion of one-fifth to be transferred to the Mayor, Aldermen and Commonalty of the City of London, and the remaining four-fifths to continue the property of the Municipal Council of the County of Middlesex; the one-fifth of such stock to be paid for by the City of London as thereafter directed.

2nd—That the City of London should pay to the Municipal Council of the County of Middlesex £2,675 on account of the several county roads; and should keep all such roads within the limits of the City, and on the boundary line thereof, at all times in a proper state of repair, but the tolls on such roads should belong to the County.

3rd—That the City of London should pay to the County of Middlesex £1966, in full for their portion of the county debt.

4th—That in future each of the two municipalities should pay the expenses of all prisoners committed to the common gaol of the County of Middlesex by authority of the respective municipalities; and the portion of such expense incurred by the City of London should be paid over by them in the month of January in each year, after the month of January last.

5th—That in future the City of London should pay to the Municipal Council of the County of Middlesex one-third of all the incidental expenses connected with the court-house and gaol of the said County, such expenses to include repairs and insurance, together with one-third part of all expenses connected with the administration of justice not paid by the government, such payment to be made in the month of January in each year after the month of January last.

6th—That the City of London should pay the Municipal Council of the County of Middlesex the sums referred to in the 1st, 2nd and 3rd clauses of this award, with interest at six per cent. in twelve months from the 1st of January, 1856, except that the City Council should pay in their share of the railway stock at the time the County debentures given therefor should become payable.

7th—They directed and awarded that such their award should take effect on the 1st of January, 1855, and continue in force till the 1st of January, 1860.

Wilson, on behalf of the County of Middlesex, obtained a rule *Nisi* calling on the Mayor, Aldermen, &c., of the City of London to show cause why this award should not be set aside:

First—Because, being made on the 28th of December 1855, it directs that it shall take effect on the 1st of January 1855.

Second—Because it limits its continuance from the 1st of January 1855 to the 1st of January 1860.

Third—Because it illegally postpones the payment of the money declared to be due from the City for 12 months from the 1st of January after the making of the award.

Fourth—Because it is contradictory and uncertain, in directing in the first clause that the one-fifth of the railway stock

[2] D. C. Act, secs. 53, 60, 69. Arch. Prac., *Execution by Fi. Fa.*

[3] The rule is referred to Arch. Prac.—Title, *Execution by Fi. Fa.*—where the authorities as to what may be seized, will be found collected.