having marked on the margin of the collector's roll that these items were paid on the day the note was given; that these facts show an intention on their part to take the note as payment and look to it alone, and that this view ought especially to be taken when it is borne in mind that the defendants have settled with Murphy on the faith of the receipts and allowed him in his acconnts for the amount as if paid in cash, and that the effect of compelling them to pay in the present suit would be to make them pay twice.

The accounts produced did not show that the result last mentioned would follow at all. They do show that Murphy has entered the amount of the taxes as a payment made by him, and has endeavoured to reduce the amount of his indebtedness to the Milloy Estate by this amount; but after this reduction there remained a large indebtedness from him to the estate which he has not paid. The settlement, if any, was merely an adjustment of the account and was not followed by any payment on either side; if in consequence of Murphy's statement that he had paid these taxes the balance is not so large as it otherwise would be, that is a matter that could easily be made right when the falseness of Murphy's statement was discovered. Murphy's debt remains and it is a mere question of account. It is very different from the case of a settlement actually carried out and closed between a principal and agent in which some credit has, through the fault of a third party who has been dealing with the agent, been allowed the agent which he was not really entitled to; in such a case no doubt the principal would be protected from any claim on the part of the third party which would put him to loss, and the third party will be left to his remedy against the agent. In the present case it cannot be said that the defendants have been in any way prejudiced by what was done by Mr. Rogers. They have not altered their position in any way in consequence of it.

Then assuming that the legal effect of the note is that it is the note of Murphy, as I think at present is the case, what right had either the collector or the Town Clerk to take it? The collector's duty is to collect money: Cooley on Taxation 501, Harrison's Mun. Manual, 4th ed., 696, note (i.); *Spry* v. *McKenzie*, 18 U. C. R., 161, and he has no right to take anything else, and if he did the right to distrain would be interfered with: Harrison, 696, note (i.). The collector is a servant of the municipality performing a public duty, and his wrongful act cannot affect the public right.

I do not think the note was treated as payment of the tax.

For the reasons herein given then I am of opinion that the plaintiffs must fail at present, and for the same reasons I think judgment must be given against them on the demurrer; the plaintiffs' statement of claim not showing or alleging that the taxes cannot be recovered by any special manner pointed out in the act.

I, therefore, give judgment for the defendants with costs; but I stay the entry of judgment until the ninth day of November next.

ENGLAND.

RECENT PRACTICE CASES.

FENDALL V. O'CONNELL.

Discovery—Husband and wife—Affidavit as to documents.

When an order for production of documents is obtained against a husband and wife who sue as co-plaintiffs, the affidavit as to documents must cover not only documents in their joint, but also those in their several possession.

[C. A.—29 Chy. D. 899.

COTTON, L.J.— . . . When a husband and wife are co-plaintiffs, the wife sueing in respect of her separate estate, without a next friend, they ought to answer severally as to documents, for the wife may have in her actual possession documents relating to her separate estate. If so, she holds them as part of her separate estate, and she must answer as to them. They are in no sense in the custody of the husband and wife.

LINDLEY, L.J.— . . . Having regard to the present status of married women, an affidavit by husband and wife, confined to documents in their joint possession, would be in substance insufficient, for it would enable them to keep back documents of which they respectively had separate possession.

FRY, L.J. concurred.

Appeal from BACON, V.C., *allowed.*

IN RE CONEY, CONEY V. BENNETT.

Equitable execution—Defaulting trustee—Receiver.

Where a trustee has by the judgment of the Court been ordered to pay money, and is out of the jurisdiction, on default in payment a receiver may be appointed of his equitable interest in property within the jurisdiction.

[CHITTY, J.—29 Chy. D. 993.

CHITTY, J.— . . . I think that a receiver is, under the circumstances, the best remedy that can be found. I therefore make the order as asked. I have to add that the question has been already