signed, "By the Court, J. C., Clerk of the Peace." The Court of Queen's Bench held this was proper evidence of that former order of sessions.

The evidence in our case was not so decisive in one particular, namely, that no other record was kept of the proceedings except the minute book, though there was no suggestion or pretence that there was any other; nor was there evidence of any practice in the Court of Quarter Sessions of receiving that book as evidence. And there is also a well settled distinction between proving the record of a different court from that in which the evidence is offered and a record of the same court. A court will look at its own minutes when sitting under the same commission, when another court would require more formal proof, and the plaintiff in this case has to prove the act or order of the Quarter Sessions.

It might be going to far to hold that the minute book of the Quarter Sessions produced at this trial was sufficient proof *per se* of the quashing this conviction, for it was not proved that no other or more formal record was kept although this entry had an apparently proper caption, and was signed by the clerk of the peace. A different rule would no doubt prevail as to indictments, verdicts, and judgments, in criminal matters at the Quarter Sessions, but this is a particular statutory jurisdiction conferred, and not referred to in the commission of the peace, nor existing at common law. We by no means wish to be understood as holding it to be sufficient, especially if the further proof were added that in practice no other record is kept or made up; but we do not feel compelled to rely upon it, for the statute authorizes the Court of Quarter Sessions to dispose of the appeal "by such order as to the court shall seem meet." There is independent proof of the conviction and of the appeal; the decision on the appeal is all that remains to be proved; and an order to the form of which as an order of court no exception has been taken, which is sealed with its seal and signed by its clerk, is produced, by which it is ordered that the conviction of the plaintiff be quashed with costs. We think this is sufficient.

The cases relied on for the defendant on this point are answered by Lord Denman in the judgment referred to, and *Williams*, J., said, "No instance has been adduced in which it has been held necessary to make up a formal record of the judgment of Quarter Sessions on an appeal. It is said that, if such an adjudication might be proved as it was here, a judgment of transportation might be proved in the same manner; but the indictment with a minute endorsed upon it would be no proof of a valid judgment, for reasons which do not apply to this case. And in the case of an indictment for perjury," (referring to *Rex* v. *Ward*, 6 C. & P. 366, which was cited by Mr. Cameron,) "the possibility of the offence having been committed would depend upon the court having had jurisdiction: consequently there must, in that instance, be such a record as would shew jurisdiction. But here the whole question was as to the order made at sessions."

In modern times the legislature have relaxed the strictness of the rules of evidence as to proof of judgments, convictions, &c. A certificate containing the substance and effect only of the indictment and conviction for a previous felony, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was first convicted, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same, although the consequence to the offender would be a much severer punishment.—(Consol. Stat. C., ch. 99, sec 73.)

We do not think we should require a greater amount of proof than that of an order of sessions directing that the conviction in question should be quashed, the conviction itself being also in evidence, and the connection between it and the order being shewn, and in fact not disputed.

We think this rule should be discharged.

Rule discharged.

COMMON PLEAS.

Reported by S. J. Vankoughnet, Esq., M. A., *Barrister-at Law, Reporter to the Court.*)

Allen v. Parke.

*Execut r of executor—Consol. Stats. U. C. ch.*16, *s.*1

Held, affirming the judgment of the county court on demurrer to the replication set out below, that an executor of an executor represents the original testator, and is properly proceeded against on a claim against him. Under Consol. Stat. U. C. ch. 16, s. 1, the renunciation of probate by one of two or more executors is peremptory and cannot be recalled on the death of the acting executor or executors.

[C. P., T. T., 1866]

This was an appeal from the decision of the judge of the county court of the county of Frontenac.

The plantiff sued in the court below upon a writ requiring the defendant to appear and shew cause why the plantiff should not have execution against the defendant, as executor of the last will and testament of George Okill Stuart, deceased, of a judgment whereby the plantiff, on the 26th of December, 1862, in the said county court, recovered against Thomas W Robinson, as executor of the last will and testament of the said the Rev. George Okill Stuart, $257 65; and he alleged that Thomas W. Robinson departed this life on the 6th of May, 1866, and by his last will and testament appointed the now defendant his sole executor, who had accepted the said executorship and the executorship of the said George Okill Stuart, and prayed that *execution* of the said judgment might be adjudged to him against the defendant.

The defendant pleaded that the very reverend George Okill Stuart by his last will and testament did appoint his son, George Okill Stuart who still survived, and the said Thomas W. Robinson, his executors.

The plantiff replied that probate of the last will and testament of the very reverend George Oakill Stewart was granted to Thomas W. Robinson alone, the said other executor having previously renounced the executorship.

To this replication the defendant demurred, assigning for cause that the defendant could not