

DIVISION COURTS.

TO CORRESPONDENTS

All communications on the subject of Division Courts, or having any relation to Division Courts, are in future to be addressed to "The Editors of the Law Journal, Barrie P. O."

All other communications are as hitherto to be "The Editors of the Law Journal, Toronto."

CORRESPONDENCE

To the Editors of the Law Journal.

Nov. 7th, 1860.

GENTLEMEN,—I would feel obliged if you would give your opinion through the *Law Journal* upon a decision which was given in a Division Court upon the following facts:

A. recovered judgment against B. in the 2nd Division Court. The defendant B. recovered judgment against C. in the 3rd Division Court, and gave to one D. an order upon the clerk for the amount of his judgment against C.

After this order was given the bailiff of the 2nd Division Court seized upon the judgment obtained by B. against C. under execution in the suit of A. against B. The clerk paid no attention to this seizure, but paid the amount realized upon the judgment against C. over to D. who held the order.

It was held upon these facts that the clerk took the proper course: and that the seizure and notice, would not hold against the order.

B. was insolvent at the time he gave the order.

T.

[We think the decision is correct. Presuming that the order given by B. to C. was designed to transfer the benefit of the judgment to the latter, that it was at all events in the intention of the parties an assignment of the judgment in B's favor without fraud and for a valuable consideration, we think as against D. the property was changed. Under the law of garnishment the equitable transfer of a debt is recognized, and why not in the present case. But a most important question arising in the case our correspondent does not notice. Could the judgment be seized at all under an execution? Some years ago our opinion, expressed in this Journal, rather lent to the view that it could, and now we are by no means convinced that it could not. Yet this opinion is very much shaken by the case of *Calderley v. Smith*, reported in vol. 3, p. 67 of this Journal. The principle there laid down, though not exactly analogous, bears very strongly on the question.—Eds. L.J.]

To the Editors of the Law Journal.

Brockville, 9th Nov. 1860.

GENTLEMEN,—Does the act 23 Vic. cap. 25, apply to the Division Courts? The 3rd section of that act furnishes a substitute for section 254 of chap. 22 of the Consolidated Statutes of Upper Canada, which clearly applies only to the Superior Courts and the County Courts. But the 4th section by its wording would seem clearly enough to apply to every court in Upper Canada from which a writ of execution may issue. If this act should be held to apply to the Division Court execution it is manifest that the form of the writ of execution prescribed for and now issued from the Division Court is opposed to the law (that is so far as the exception to certain goods is concerned) and commands the bailiff to do what the statute declares shall not be done under any writ. As this question is of some importance to many of your readers, and as your views, expressed in print, are always considered with respect, because given cautiously, and not without deliberation, an answer would oblige,

Yours truly,

D.

[The act clearly applies to Division Courts. Section 2 fits the existing Division Court Law to altered exemptions pro-

vided in sec. 4. Section 3 does the same thing for the Superior Courts.

Of course the old form of writ is wrong and should be altered to square with the new law. If D. will look over recent numbers of the *Law Journal* he will see that a caution has already been given on this head and a suggested form given for altering the writ.

The alteration we gave was from an execution which had been submitted to Judge Gowan, and approved by him. For further information on this subject we refer our correspondent to the last August number of this Journal.—Eds. L. J.]

U. C. REPORTS.

QUEEN'S BENCH.

TRINITY TERM, 1860

Reported by ROBERT A. HARRISON, Esq., Barrister-at-Law

IN RE. GIBSON AND THE UNITED COUNTIES OF HURON AND BRUCE.

Assessment Act, sec 70—Equalization by County Council—Authority of Courts to interfere—Sitting under By-laws

It is provided by the Assessment Act, s 70, that the Council of every County shall yearly, before imposing any County rate, and not later than the first day of July, examine the assessment rolls of the different townships, towns and villages in the County for the preceding financial year, for the purpose of ascertaining whether the valuation made by the assessors in each township, town or village for the current year bears a just relation to the valuation so made in all such townships, towns and villages; and may, for the purpose of County rates, increase or decrease the aggregate valuation of real property in any township, town or village; adding or deducting so much per cent. as may, in their opinion, be necessary to produce a just relation between all the valuations of real estate in the County; but that they shall not reduce the aggregate valuation for the whole County, as made by the assessors.

Held, upon a complaint against a County Council of unfair equalization, that the court has no authority to place itself in the situation of the Council, and to judge for them; still less to place itself above them, and overrule their valuations, upon whatever ideas the court may entertain as to what would be more just or more reasonable in regard to amount, and that it is not the province of the court to judge of the reasonableness of the valuations by comparing the value set upon land in one municipality, with the value set upon land in another.

Smile. If it were there are various circumstances to be taken into consideration, as bearing upon the question of computation and value of which the court has not the means of judging, for want of that local knowledge which the members of the County Council, chosen by the people themselves, must be supposed to possess.

Quere. As to the proper method of carrying the act into effect. Per Robinson, C.J. "I confess I think that although the person who framed the 70th and 71st clauses of chapter 55, may have understood very clearly himself what he intended, he has not succeeded in making the meaning quite intelligible to others."

Held also. Although the statutes do require that by-laws to be passed for certain purposes shall contain particular recitals and provisions, yet the court is not at liberty to interfere anything against the validity of the by-law, unless it can see clearly on the face of the by-law, or have otherwise shown to it, that the by-law was passed for a purpose which required them to be inserted.

Mr. Harrison, in this term, obtained a rule on the Corporation of the United Counties of Huron and Bruce, to show cause why their by-law No. 8, intitled "A By-law to raise within the United Counties of Huron and Bruce the sum of fifty-one thousand dollars for general local purposes for the year 1860," or so much of it as relates to the townships of Morris, Grey, Howick and Turnberry, in the county of Huron, or some one of those townships should not be set aside with costs.

1st. Because the Council of the United Counties did not, in June last, 1860, when equalizing the valuation in the different municipalities of the said United Counties, examine the assessment rolls of the different townships, towns and villages, for the preceding financial year, in order to ascertain whether the valuations made by the assessors in each case for the current year bore a just relation to the valuation, &c., made in all such townships, towns and villages in the said United Counties.

2nd. Because the valuations in the different townships, towns and villages in the county of Bruce, as pretended to be equalized by the Council, bore no just relation to the valuations in the townships, towns and villages of the county of Huron, but were made and equalized independently of them.

3rd. Because the valuations in Huron are not made to bear any just relation to each other; but new townships—such as Morris, Grey, Howick and Turnberry—are excessively and disproportion-