

DIGEST—NEW BRUNSWICK.

Held, 1. That as the defendant had jurisdiction over the subject matter of the complaint, and, when the constable made the affidavit of service of the summons, also over the plaintiff's person, trespass would not lie without malice or want of reasonable and probable cause.

2. That the plaintiff's imprisonment at Kingston being only a remand for safe custody until the complaint could be heard, it was legal, though the building was not the common gaol of the county—the power being given by 32 & 33 Vict. c. 31 § 33 Statutes of Canada.—*Birch v. Perkins*. 327.

Insolvent Act of 1869—Privileged creditor—Arrears of wages—Daily laborer—Where servant leaves employ of insolvent before assignment—Waiver—Section 67.

C assigned under the Insolvent Act of 1869, on the 14th November, 1872, being indebted at the time to N. in the sum of \$945. Part of this sum was for wages due the claimant as a shipwright in the employ of the insolvent at daily wages. The whole was settled with the insolvent on the 28th October, 1872, the claimant taking four notes payable in 1, 3, 6 and 9 months respectively. The last work done by the claimant was on the 8th August, 1872, after which time he continued boarding the insolvent's men up to the 24th October. The claimant swore that the sole reason he left his employ was because he would not pay him.

Held, that, in the position in which the claimant placed himself, he could not be considered in the employ of the insolvent, and was not entitled to be preferred as a privileged creditor under the 67th section of the Act.—*Ex parte Napier*. 309.

Frauds (Statute of)—Contract—Uncertainty,

The defendant undertook to give or procure for the plaintiff a situation as clerk or book-keeper at \$1000 a year, in consideration for which the plaintiff was, for a certain sum agreed on, to give the defendant a deed of his interest in certain lands and to "use his influence with the other heirs" to procure deeds to the defendant. In an action brought against the defendant for breach of this agreement.

Held, 1. That the contract was not void for uncertainty.

2. That it was not void under the Statute of Frauds, as being a contract not to be performed within a year.—*Bennett v. Peck*. 316.

Insolvent Act of 1869, sec. 50—Remedy against Assignee.

The holder of a mortgage on personal property belonging to an insolvent having replevied it from the assignee,

Held, that the remedy by action was taken away by section 50 of the Insolvent Act, and that he should have applied to the Judge for an order under that section.

In a case of compulsory liquidation, the judgment of the County Court Judge adjudicating the party insolvent is *prima facie* evidence of his being a trader.—*McGuirk v. McLeod*. 323.

Insolvent Act of 1869—Claim—Contestation of Pleadings—Unpaid cheques—Notice of dishonour—Necessity of alleging damage for want of

In resisting a claim filed against an insolvent's estate on cheques drawn by the insolvent and unpaid for want of funds, on the ground of want of presentment and notice, it is necessary to allege and show that, by reason of want of notice, the insolvent or his estate had sustained loss or injury.—*In re Oulton*. 333.

Insolvent Act of 1869—Arrest after assignment by creditor who has proved claim—Discharge—Whether Court will set aside writ.

Where an insolvent has been arrested after assignment by a creditor who has filed his claim under the Act and taken part in the proceedings, the Court will not set aside the writ and discharge the defendant out of custody, but will leave him to his relief under the 145th section of the Act, by application to the County Court Judge.—*Hegan v. Jones*. 290.

Replevin—Distress for rent—Where tenant has assigned under Insolvent Act of 1869—Whether right of distress taken away.

The estate of M. was put in compulsory liquidation under the Insolvent Act of 1869, and the plaintiff, who was the official assignee, took charge of the estate, including goods on the premises of the defendant, McGuirk, then held by M. as his tenant. A year's rent being in arrear, while the goods were still on the premises, though in the possession of the plaintiff as guardian under the Act, McGuirk distrained for rent.

Held, in an action of replevin brought by the plaintiff to recover possession of the goods, per Ritchie, C. J., and Allen, Weldon and Fisher, J. J. (Wetmore, J., *dissentiente*) that the landlord's common law remedy by distress is not taken away by the Insolvent Act of 1869.

Per Wetmore, J. That the landlord's right to a year's rent, to which his preferential lien is limited by the 81st section, can only be enforced by a summary application to a court or Judge under the 50th section of the Act.

Quære. Whether the clause in the 81st section of the Insolvent Act of 1869 restricting a landlord's preferential lien for rent to one year is not *ultra vires* the Dominion Parliament.—*McLeod v. McGuirk*. 248.