

DIARY FOR FEBRUARY.

1. Sat.....Sir Edward Coke born 1552.
2. Sun.....*Septuagesima*.
3. Mon.....County Court Non-Jury Sittings in York. Hilary Term commences. High Court of Justice Sittings begin.
5. Wed.....W. H. Draper, 2nd C.J. of C.P., 1856.
9. Sun.....*Sexagesima*. Union of U. and L. Canada, 1841.
10. Mon.....Queen Victoria married 1840. Canada ceded to Great Britain, 1763.
11. Tues.....T. Robertson appointed to Chy.Div., 1887.
15. Sat.....Hilary Term and High Court of Justice Sittings end.
16. Sun.....*Quinquagesima*.
18. Tues.....Supreme Court of Canada sits.
17. Wed.....Ash Wednesday.
20. Thu.....Chancery Division High Court of Justice sits.
21. Sun.....*First Sunday in Lent*.
24. Mon.....St. Matthias.
28. Fri.....Indian Mutiny began 1857.

Reports.

FIRST DIVISION COURT OF THE
COUNTY OF ONTARIO.

WEBSTER v. MCDOUGALL.

Division Court Act, secs. 88, 89, 290.

In an action against a bailiff for a false return, sections 88 and 89 are not applicable, but section 290 is: and the effect of that section is that no such action can be brought except in the county where the bailiff resides and only in the County or High Court.

[WHITBY, Nov. 28, 1889.]

The following facts were admitted :

1. The defendant is the Bailiff of the First Division Court of the United Counties of Northumberland and Durham, and this action is brought against him in said capacity.
2. The defendant in the early part of 1888 had an execution in his hands in a suit of Webster (the plaintiff herein) against one Pearce, and under said execution seized a colt, and subsequently seized some cattle; a claim was made to the cattle, an issue was directed, and on the trial the goods were found to be liable to the execution, and against the claimant. That the Bailiff (defendant herein) sold the goods so seized (excepting the colt) and paid the proceeds into Court, and returned the execution also as satisfied in part, and *nulla bona* as to balance.
3. The said return was made more than six months prior to this action being brought.
4. The Bailiff (defendant) herein has received no notice of action.
5. The Bailiff (defendant) resides in the town of Bowmanville which is five miles from the village of Newcastle, where the sittings of Second Division Court of the United Counties of Northumberland and Durham are held; and the

town of Whitby, the place where the sittings of this Court are held is distant thirteen miles from Bowmanville.

6. The parties hereto have agreed that the Judge of this Court may decide on these admissions.

DARTNELL, J. J.—Section 88 of the Division Court Act is clearly not applicable, because it only applies to a case where there is a *debt due to or by* a Clerk or Bailiff. The action, therefore, could not be brought in the Newcastle Division Court because it is not brought for a debt but for a malfeasance in office.

Section 89, to my mind concerns actions of a like nature as an action *against* a Clerk or Bailiff, and is controlled by section 290. As practically this action is for a false return, it appears to me that the latter section applies.

It is "a thing done in pursuance of the Act" which provides "that the action shall be commenced within six months after the fact was committed, and shall be "laid and tried in the County where the fact was committed and notice given," etc., sec 290 (d).

These words appear to me to oust the jurisdiction of *any* Division Court to try this action, and that the plaintiff's remedy is in the County Court of the County in which the fact was committed; or in the High Court with the venue laid in that County, according to the damages claimed.

I hold I have no jurisdiction to adjudicate, and I dismiss the action with costs on that ground only. There will be no necessity to express any opinion upon the facts or on the other questions raised.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

ONTARIO AND QUEBEC RAILWAY CO. v.
MARCHETERRE.

Application to give security for costs—Supreme and Exchequer Courts Act, s. 46—Appeal—Jurisdiction—Interlocutory judgment—Final judgment—Art. 1116, C.C.P.—Amount in controversy not determined—Supreme and Exchequer Courts Act, ss. 28 and 20.

STRONG, J. (in Chambers), dubitante as to the jurisdiction of the Supreme Court to hear an