*East London Waterworks Company* v. *Bailey* is cited with approval as showing the existing law. Notwithstanding these authorities, however, we have no doubt that both *Horn* v. *Ivie* and the rule established by it are now overruled. In the first place, as was pointed out in *The Dean and chapter of Windsor's case*, 2 Wms. Saund. 305 a., and in *R.* v. *Bigg*, 3 P. Wms. 423, the service in *Horn* v. *Ivie* can hardly be said to have been an ordinary service, and indeed was not in truth a distress at all, but a seizure of forfeited goods. Moreover it is laid down in Bro. Abridg. *Traverse per sans ceo*, pl 3; and is still clear law, that a subsequent ratification by a landlord of a bailiff's authority is as effectual as a previous command, and it is hard to see why this rule should not apply in the case of corporations. Independently of this, too, there are several direct authorities on the other side. The first is a note in 1 Salkeld, 191, in the following words: "A corporation aggregate may appoint a bailiff to distrain without deed or warrant, as well as a cook or butler, for it neither vests nor divests any sort of interst in or out of the corporation: so held inter *Cary* v. *Mathews* in Cam. Scacc." This case, however, is also reported in 1 Shower, 61, and 3 Mod. 137, and from these reports it would appear that the real question there, as well as in one or two earlier cases, was whether a bailiff of a corporation, who was duly appointed for general purposes, could distrain without a special authority. Perhaps, therefore, neither *Cary* v. *Mathews*, nor the above cited passage in Viner's Aridg., which depends upon it, can be considered as of any authority on either side of the question. Far more weight, however, is due to a passage in Viner's Abridg. Tit. *Corporations* (K), 25 and 29, where it is said that "He who distrains as bailiff of a corporation, and is not bailiff, may make conusance, &c., if they agree to it, and good without deed; and the case was that one of the corporation had distrained in right of the corporation, and had not their deed." *Though the law is that a bailiff may justify in trespass*, as bailiff to a corporation without a deed, yet it is not like to a bailiff *in an assize*. *Doe* v. *Peirce*, 2 Camp. 96, though indirectly bearing on the present question, may be considered as shaking the authority of the old decisions, as it was there held that a verbal notice to quit given by a steward of a corporation was good, without showing his authority. The old rule, however, seems to have received its great blow from the Court of Queen's Bench, in *Smith* v. *The Birmingham Gas Company*, 1 A. & E. 526. After considering the authorities the Court there held unanimously that a bailiff need not be appointed by writing under the corporate seal. An attempt may indeed be made at some future day to place this case on the narrow basis of the company's Act, the 9th section of which would have quite supported the decision. It is clear, however, from their judgments, that the learned judges did not decide the case on any such narrow basis, but intended to lay down a broad general rule. Indeed they refused to recognise *Horn* v. *Ivie* as a general authority, and Lord Denman, C. J., said that it proceeded simply on the ground that the service of the bailiff was not an ordinary one.

On the whole the weight of authority seems very strongly in favour of the view that the corporate seal is not necessary; but at the same time, both corporations and bailiffs will do well to have the corporate seal affixed whenever circumstances will allow this to be done.—*Solicitors' Journal.*

## ONTARIO REPORTS.

### COMMON LAW CHAMBERS.

*(Reported by* Henry O'Brien, Esq., *Barrister-at-Law, Reporter to the Court.)*

#### Taylor v. Grand Trunk Railway Company.

*Railway Co.—Service of writ of summons on Station Master.*

The station master of a railway company, the head office of which is not within Ontario, is not an agent on whom service of a writ of summons against the company can properly be effected, under C. L. P. Act, sec. 17.

[Chambers, Oct. 13, 1868.]

*Lauder* obtained a summons calling on the plaintiff to show cause why the service of a writ of summons against the defendants, which had been effected on a station master of the company, should not be set aside as irregular, on the ground that the station master was not an agent of the company within the meaning of section 17 of the Common Law Procedure Act, which enacts that "every person who, within Upper Canada, transacts or carries on any of the business of or any business for any corporation whose chief place of business is without the limits of Upper Canada, shall for the purpose of being served with a writ of summons issued against such corporation, be deemed the agent thereof."

*Osler* showed cause, and contended that the words were so wide and general as necessarily to embrace the case of a station master or agent.

Morrison, J., held that the agent contemplated by the act was in his opinion a general agent, or superintendent, or some other officer of that description; and that the service of the writ on the station master was irregular.

*Summons absolute, without costs.*

#### Neill v. McLaughlin et al.

*Action on administraton bond—Breaches—Staying proceedings.*

On an application made to stay proceedings on an administration bond:

*Held*, 1. That no citation is necessary to compel the delivery of an account by an administrator, or to make it necessary for an administrator to collect and pay debts.

2. The want of a decree of distributions is an answer by way of plea to a breach for not distributing.

3. Full damages may be recovered on breach for not administering. *Quære*, if the breach should show receipt and misappropriation of funds; but if declaration defective in that respect, defendants should demur.

Stay of proceedings refused.

*Dictum in Earl of Elgin v. Cross*, 10 U. C. Q. B., 246, doubted and distinguished.

[Chambers, Oct. 19, 1868.]