the county town, pursuant to the statute 19 Vic. cap. 66, was disabled afterwards to pass the by-law moved against, for that Malton was then, by their previous appointment, the county town.

The by-law recited that under the statute 19 Vic. cap. 66, the Provisional Council of the County of Peel were authorized and directed, at some meeting of the Council to be held after the 1st February, 1857, to proceed to select a place for the county of Peel, and that the place so selected should be the county town of the said county, and that it was necessary and expedient to make such selection by by-law; and that the village of Brampton be, and the same was thereby selected as the place for the county town of the said county of Peel; and that the said village of Brampton being the place so selected, should be and was thereby declared to be, according to the statute, the county town of the said county of Peel.

It was shown by affidavit that on the 7th December, 1859, the Provisional Municipal Council of the county met, according to the 4th clause of the statute, to select and appoint the site for the county town, and that a resolution appointing Malton the county town was passed by a vote of six to five of the members present.

This resolution, and others passed at the same meeting, making certain arrangements in pursuance of the first resolution, were certified under the corporate seal, with the signature of the clerk. At the time of passing the resolution, the Council had no seal.

It was shown, further, that at a meeting of the Provisional Council, held on the 29th December, 1859, steps were taken respecting the selection of ground upon which to erect a gaol and court-house in the village of Malton, and respecting the providing plans for such buildings.

On the other hand, it was stated in an affidavit that the meeting of the 7th December, at which the resolution was passed selecting Malton for the site of the county town, was a meeting held by adjournment from a meeting that was held on the 5th December (two days before), and was not a meeting called for any special purpose, or with any formality out of the ordinary course; that at the next meeting of the Council the report made by a select committee, which had been appointed to select ground in Malton for a gaol and court-house, was not adopted; that no land for the purpose had been selected or acquired; and that the plans for the public buildings had not been accepted by the Provisional Council.

Adam Wilson, Q.C., showed cause.

M. C. Cameron and *R. A. Harrison* supported the rule.

ROBINSON, C. J., delivered the judgment of the court.

There seems to have been no statute passed that can affect this matter, since the statute 19 Victoria, chapter 66. For the constitution and powers of provisional councils, who are to take the necessary measures for perfecting the separation of a junior county from another to which it has been united, we must refer to the statute 12 Victoria, chapter 78.

Taking that act and the statute 19 Victoria, chap. 66, together, it seems clear that the reeves and deputy reeves for the time being, chosen within the junior county, are to compose the provisional council, which may continue to exist and act as long as may be necessary for carrying out the powers committed to it.

There is nothing in the objection taken, in arguing this case, that the provisional council could not continue after the first year.

The delay in selecting a site for a county town is not accounted for, and does not seem to me to be material, looking at the terms of the special act 19 Victoria, chapter 66.

The first question, then, is, as to the selection made of Malton, at the meeting of the 7th December, 1859, was that done in a sufficient manner? I think there is no ground on which we can determine otherwise. It does not appear in any way before us, when the vote of the municipal electors of the county was taken, which sanctioned the separation from the county of York. For all that appears, it may have been shortly before the selection of the county town; but, however that may be, it is not shown that it was not declared and understood, at the meeting of council previous to the 7th December, that at the meeting to be held on the 7th December the council would proceed to select the site of the county town; nor is it shown that all the members of the provisional council were not attending at that meeting.

The Provisional Council, it is sworn, had then no seal; and if they had one, I am not of opinion that the affixing it to the resolution naming the site of the county town would have been indispensable, or that the act was one which could only be done under seal; for it was not an act divesting the corporation of any interest, or contracting any engagement with a stranger, or for the purpose of creating any legal interest or authority: it was simply an expression of their choice, made in pursuance of an act of Parliament which required them to select. And I do not think that a by-law was necessary, though it would have been more becoming the occasion to have used that formality. (Grant on Corporations, 54-57.)

The statute does speak, in the 5th section, of certain acts to be done by by-law *or otherwise*. In the 2nd section it directs a certain other act to be done by by-law; and in regard to this matter of selecting a county town, it does not prescribe with what formality it shall be done. It required, I think, to be done at least by a resolution properly put and carried, and entered on the minutes of the corporation, but not necessarily by a by-law.

The next question is, whether, if Malton was selected in a manner sufficient under the statute, it was in the power of the corporation to change the selection. In my opinion it was not, for they had no general continuing authority over the matter. They were merely empowered to act *pro hac vice;* for the statute indeed says in express words, that the place selected by them at some (that is to say any) meeting to be held by them after the 1st February following the vote of approval of the separation by the inhabitants, "shall be the county town of Peel." There can be no doubt that the Legislature so intended; for the inconvenience attending the exercise of an unlimited power of altering such a decision, would be very great.

I fear it is but too obvious, from the papers before us, that the case may be found to call for legislative interference; for there is an appearance of its being difficult to carry out the selection which has been made, from the difference of opinion existing in the Council.

Rule absolute to quash the by-law with costs.

CHAMBERS.

GEORGE H. GORDON, JUDGMENT CREDITOR, JACOB BONTER, JUDGMENT DEBTOR, AND DURHAM OCKERMAN, GARNISHEE.

Garnishee—Garnishee order—Setting aside—Direction of execution.

Where the garnishee (a deputy sheriff) after the lapse of ten months, applied to set aside an order ordering him to pay to the judgment creditor the debt alleged to be due by him to the judgment debtor, upon the ground that when the garnishee order was made there was no such debt, and that he the garnishee was ignorant of the nature and effect of the proceedings being taken against him the application was refused.

A writ of execution against the goods and chattels of a deputy sheriff, may be directed to the sheriff of the County in which the deputy resides, and ought not to be directed to a coroner of that County.

In such a case plaintiff was allowed to withdraw his writ of execution and amend it by directing to the sheriff and not the coroner.

The garnishee obtained a summons calling on the judgment creditor to shew cause why the order of Wm. Smart, Esq., Judge of the County Court of the County of Hastings, made in this matter bearing date the first day of February, 1859, ordering the payment of a debt alleged to be due from the garnishee to the judgment debtor, to be made to the judgment creditor by the garnishee, and in default thereof that execution might issue out of the County Court of the County of Hastings, and why the writ of *fieri facias* against goods and chattels issued thereunder, and all subsequent and other proceedings thereupon, and on the said order should not be set aside with costs, and an issue directed to be tried between the said garnishee and the said judgment creditor, or why such other order should not be made as to the court or judge should seem meet on the grounds that there was not at the time of the issuing in this matter of the garnishee order attaching the debt and summons dated the 22nd day of January last past, any debt due or accruing due from the said garnishee to the said judgment debtor; nor has there been at any time such debt, and on the ground of merits—and for irregularity in issuing the said order for payment or execution as shewn in the affidavits and papers filed—and on the ground that the writ of *fieri facias* was directed to the Coroner of the County of Hastings, instead of to the sheriff, and on the other grounds disclosed in the affidavits and papers filed, or why the said writ of *fieri facias* and all subse-