

No deeds, writings, &c., unless they be securities for the payment of money, are within the meaning of the clause. For instance, a title Deed, or a letter or a guarantee for some collateral act, or any other deed or writing which could not form the foundation of an action by the debtor himself for a specific sum of money, cannot be taken. But it would seem that all instruments containing an unconditional covenant or agreement for payment of a specific sum of money to the execution debtor for his own benefit are within the words "securities for money," and may be taken.

The word "money" used in the above enactment means specific gold and silver coin or bank notes, and *not* debts due to the defendant, nor money in the hands of a third person and held by such third party for the defendant, and this would probably extend to money in the hands of a Clerk of the Court. A question may arise whether money, &c. in the actual possession of the defendants, in his pockets, or the like, can be taken: apparently it cannot—at least, if the taking involve an act of trespass.(2)

It would seem that "Stock Notes" and "Labor Note," if the amount in money be mentioned therein, are within the enactment, and may be seized. As a general rule, it will be found more convenient not to seize notes, &c., where there is other property sufficient to satisfy the amount of the execution; and whenever securities for money are seized, it will be advisable for the Bailiff to hand them over to the Clerk with as little delay as possible, for in case of losing the documents he would be liable to the plaintiff for any loss incurred thereby.

Should any nice question arise as to Bailiff's right to seize a particular chose in action, he may reasonably ask an indemnity from the plaintiff before proceeding.

U. C. REPORTS.

GENERAL AND MUNICIPAL LAW.

FETTERLY v. THE MUNICIPALITY OF RUSSELL AND CAMBRIDGE.

(Reported by C. Robinson, Esq., Barrister-at-Law.)
(Trinity Term, 26 Vic.)

Work done for municipality—Necessity for contract under seal—Separation of townships—By-laws and resolutions.

The plaintiff sued for work done upon a road in the Township of Russell, Clarence, Cumberland, Cambridge and Russell had been united: Cumberland was separated from the union in 1850, and Clarence in 1853.

In January 1851, the Municipality (then consisting of Clarence, Russell and Cambridge) passed a by-law, enacting that their treasurer should receive from the county treasurer all monies received by him as tilled lands assess-

ment money due those townships: that the councillor or councillors for each township should decide on the localities in which such monies should be expended thereon respectively, and should expend the same, making proper returns to the treasurer; and that on completion of such jobs so given out, the road surveyor should be associated with the councillor for examining the same, and if approved of, the parties performing the work should be entitled to payment.

In June 1851, a resolution of the same municipality was passed, that the road surveyor should be associated with J. S., one of the councillors for Russell, to receive tenders and approve of contracts for opening the road from the boundary line of Cambridge and Russell to Louck's mill in Russell.

In January 1854, another by-law was passed by the municipality (which then included only Cambridge and Russell) authorizing the treasurer to accept all orders drawn by the late municipality upon the late treasurer (that is, the treasurer of Clarence, Russell and Cambridge.) The plaintiff's tender was accepted in pursuance of the resolution of June 1851, and the work was performed, examined and approved of by the surveyor, and Stewart, the councillor named in that resolution; and under the by-law of June 4 1851, Stewart gave an order for the sum agreed upon in favour of the plaintiff on the treasurer of Clarence, Russell and Cambridge.

Held:—1st. That under the by-law of 1851, the defendants (the municipality of Russell and Cambridge) had adopted the order on the treasurer of the former union, and therefore no difficulty was caused by the fact that the municipality sued was not that contracted with.

2nd. That a contract under seal was unnecessary.

3rd. That it was no objection that H., the other councillor for Russell, had not acted with Stewart; and if it were, his dissent was not sufficiently shown.

(14 Q. B. R., 433.)

DEBT on simple contract, on common counts, for work and labour and materials, and on an account stated.

Pleas—Never indebted, payment, and set-off.

The plaintiff sued for work done by him for the defendants, in making a road from the boundary line of the township of Cambridge to Louck's, in the township of Russell, between the 1st of August and the 4th of November, 1851.

At the trial, at Cornwall, before *Draper, C. J.*, the facts appeared as follow:

The townships of Clarence, Cumberland, Cambridge and Russell, had been at one time united, and Cumberland was separated from them by a by-law of the United Counties of Prescott and Russell in December 1850. In 1853 Clarence was taken from the union by a by-law, leaving Russell and Cambridge to form one municipality—the junior.

On the 10th of June 1851, while Clarence, Russell and Cambridge were still united, a resolution of the municipal council was passed, reciting that several of the said townships, and among them the township of Cambridge, had expended large sums of money in opening and making passable the road through the several townships, so as to confer upon the inhabitants the benefit of a leading post communication through the interior of the county to the city of Montreal, and that there yet remained, as an impediment to the completion of such communication, a small portion of the road to be opened from the boundary line of Cambridge and Russell to Louck's mill in the township of Russell; and it was thereby resolved (on the motion of John Stewart, seconded by David Harrison) that the road surveyor be associated with Mr. John Stewart for the receiving of tenders and approving of contracts on said road, and that so soon as possible they should proceed to lay out said road in sections of half a mile each, and advertise for tenders for the same, so as to complete the line of post communication from Russell to the city of Montreal.

On the 21st of January preceding (1851) a by-law had been passed by the Municipal Council of the united townships of Clarence, Russell and Cambridge, reciting that it was necessary that a system should be adopted for the due expenditure of the wild-land assessment money, and enacting that the treasurer of the municipality should demand and receive from the county treasurer all sums paid into his hands as tilled land assessment money due the townships composing this municipality, and should keep a separate account thereof; that the councillor or councillors for each township of the municipality should decide on the localities in which the said monies should be expended from time to time in the several townships, and should cause notices to be put up in the respective townships, in three of the most public places, stating

(2) See note ante.