anywhere, notwithstanding the cause of action against the trespasser, and for the trespass would have been local.

There may be room for doubt upon the question, but considering the venue is not matter of substance, in such a case, because the crown has a right to lay it in any county, and it is laid in a county, in the record, and that county the most proper one, the recognizance being a record now in this court, I am of opinion that the summons should be discharged.—Summons discharged.

RICHARD CUTHBERT v. JOHN STREET, SURVIVING EXECUTOR OF THE LAST WILL AND TESTAMENT OF TIMOTHY STREET.

Notice of Trial—Computation of time—Consolidated Statutes U. C cap. 22 J. W.

In computing the eight days required for Notice of Trial the Commission Day of the Assizes must be excluded.

(January 9th, 1860.)

This was an application to set aside the notice of trial in this cause served on Thursday the 29th December, for the Toronto Assizes held on Thursday the 6th January, 1860, on the ground that such notice did not give eight days pursuant to the statute.

The motion was supported by *Harrison* on the part of the defendant and argued on the part of plaintiff by *Beaty*, who referred to the practice under ch. 1, 2nd Geo. IV, secs. 22 & 36, as establishing a rule in cases like the present under precisely similar provisions.

Under the first of these sections, it was provided that, the first and last days of all periods of time limited by that Act, or thereafter to be limited by any rules or orders of Court, for the regulation of practice should be inclusive and the 36th section declared, "that no indictment, information, or cause whatsoever shall be tried at Nisi Prius, before any Judge or Justice of Assize, or Nisi Prius in any district of this Province, unless notice of trial in writing has been given *at least eight days before such intended trial.*

McLEAN, J.—Under that Act the practice certainly did prevail to give notice of trial so that computing the day of service of the notice and the first day of the Assizes eight days would be made up, but I cannot think that such a practice was correct or sanctioned by the Statute, and I am not at present aware of any judicial decision by which it is sustained. The statute clearly intended that a defendant at Nisi Prius should have at least eight days notice of trial and the number of days ought not to be abridged by making the first and last inclusive. It is I think also clear that at least eight days notice were required to be given *before* an *intended trial.*

Now if notice were given on a Monday of an intention to try a cause on the Monday following, the first day of the Assize, that could not be a notice of eight days *before* the *intended* trial for the tention to *try on*, the first day is manifested and a party must be entitled to the *whole* of that day to make up the number of days allowed for preparing a defence.

The Common Law Procedure Act 1856, sec. 146, made eight days notice of Trial or Assessment sufficient in all cases whether at Bar or at Nisi Prius. A change in the computation of time was introduced by this provision and continued until the Consolidated Statutes came into operation on the 5th of December last. Up to that time the rule adopted was to make the first day inclusive and the last exclusive or *vice versa*, and in the cases of *Frooman* v. *Stuart*, 2nd U. C. Prac. Rep. 124 & 126, and *Buffalo and Lake Huron Railway Company* v. *Brookshanks*, before me in the Practice Court as well as in a case before Sir J. B. Robinson in Chambers, v. *Dickson*, 1 U. C. Prac. Rep. 366, proceedings were set aside for irregularity, because that mode of computation of time in giving notice of trial or demanding plea was departed from. Now by the 21st chapter of the Consolidated Statutes sec. 201, it is declared that eight days notice of trial or of Assessment, the first and last days being inclusive shall be given and shall be sufficient in all cases whether at Bar, or at Nisi Prius, or at the County Courts; thus introducing again the period which was established under the 36 section of 2nd Geo IV, ch. 1. The question arising now is whether the first day of the Assizes can be reckoned as one of the eight days, and whether the practice which formerly prevailed in that respect shall be revived and continued hereafter.

I am clearly of opinion that the practice was wrong and ought not to be again introduced and in this opinion I am confirmed by *the views of a number of my brother judges* with whom I have consulted on the subject. By the old mode of computing time under ch. 1, 2nd Geo. IV, it was in the power of a plaintiff to abridge the time for notice of trial, so as in fact to give little more than six days; if notice were served at 9 or 10 o'clock at night on Monday for trial on the Monday following, and a cause were brought on at ten o'clock on the first day of the Assizes as might be the case, very little more than six days time would be allowed to prepare for trial, including the Sunday before the Assizes. A practice admitting of such abuse ought not I think to prevail, and though in computing the time, the first and last days must be inclusive, that must be taken to include the day of service and the day before the the Assizes if necessary to make up eight days; so that in no case can the first day of the Assizes be reckoned as one of the days which may be included in 8 days notice of trial.

The decision in this case may cause some inconvenience, but I think it better that a rule should be established by which every defendant shall be entitled to what the law intended to allow him, viz., eight days notice, before a suit can be brought to trial against him.

On these grounds I think the notice of trial in this case must be set aside, but as the point is new and the plaintiff's attorney might reasonably expect that the practice under the former act of Geo. IV, should again be continued, I make the summons absolute without costs.—Summons absolute without costs.

IN RE JAMES FRANCIS v. JAMES BOULTON.

Attorneys bill—Delivery and Taxation thereof—Costs of application.

An Attorney may be ordered to deliver his bill against his client though the same may have previously been fully settled and to give credit therewith for all monies received by him

When an order has been properly made for an attorney to deliver his bill and he makes default, he will have to pay the cost of such order in any event.

When after a claim has been settled this client applies to have the attorney's bill taxed, and nothing is found due to him in such taxation he will have to pay the costs of the application.

(November, 1859.)

This was a summons calling on Mr. Boulton to shew cause why he should not deliver to applicant his bill of costs to be taxed, and all credits for money received by him for applicant within one week.

It appeared Mr. Boulton had been employed by Francis as his attorney in these suits, one against Andrew Quinton, which was settled and the costs paid in another, against Hugh Johnston and Horatio Johnston, in which after the plaintiff Francis succeeded he arranged the matter with the defendants, and became liable himself to settle Mr. Boulton's costs, and the third against one Watson, in which Mr. Boulton collected upwards of £25.

The application related to these two last mentioned suits, and the object was to obtain the bill in the suit *Francis* v. *Johnston et al*, in order to have it taxed and to ascertain how much Francis ought to claim in the suit against Watson.

It appeared also that in the suit against the Johnstons, Francis had paid Mr. Boulton a retainer of $10.

One Cool made an affidavit that he was acting under a power of attorney from Francis in this matter. In his affidavit of 27th September 1859, Mr. Boulton says, he has received the balance in suit of *Francis* v. *Watson*, of £25 or thereabouts, which he is ready to account for.

On 27th September, 1859, order that Mr. Boulton should deliver his bill of costs in the suit *Francis* v. *Johnston*, and give all credits within a week from the service of the order. This order was served on the same day.

On 17th October, 1859, there was a summons calling on Mr. Boulton to shew cause why he should not pay Francis £26 16s. collected by him from Watson; and the costs of the application. This was granted on an affidavit of the Sheriff of Halton, that on a writ of execution in the cause *Francis* v. *Watson*, there was collected £26 16s. debt, and £12 18s. costs, taxed, writ and interest which money on the 7th May, 1859, was paid to Mr. Boulton, and an affidavit of the demand of the money and of the service of the order for the delivering of the bill and that no bill had been delivered.