

The decisions of the Queen's Bench previous to the Act 10 and 11 Vic., chap. 16, are important, and refer to English and Canadian cases; amongst which see *Lane v. Kingsmill*, 6 U. C., Q. B., 579, wherein was discussed, whether an attachment for contempt in not paying money was mesne or final process, and the point raised or hinted at, that a sheriff on an attachment may take bail to the limits after the return day has passed.

See also *Rea v. Kidd*, 4 U. C., Q. B., 181, and Hil. 6 Wm. IV., R. & H. Dig., Limits. Other cases in *Lane v. Kingsmill*, page 584, printed 484.

Upon the clause of the statute and the authorities referred to, I have now no doubt of the propriety and legality of the sheriff's act in taking the bond under the 302 sec. C. L. P. Act, 856.

Were the matter doubtful to me I would still take the same course and order the allowance, leaving the question of legality to be raised by the plaintiff in an action for escape,

My allowance will not make good, a void bond, nor prejudice the plaintiff. The more I read and reflect the less doubt I have.

My allowance will therefore be indorsed on the bond according to the statute.

## GENERAL CORRESPONDENCE.

*To the Editors of the Law Journal.*

ETOBICOKE, November 15, 1858.

GENTLEMEN,—I request your attention to the following:—

Are Naval or Military Pensioners liable to perform Statute labor or to commute for the same in consequence of occupying or owning real estate; that is, are they liable for the labor chargeable against the real estate which they may hold?

It appears plain from the eighth clause of the sixth section of the Assessment Act that the personal property of such persons is exempt from taxation of any kind, but it is not clear that they are not liable in respect of real estate which they may hold.

I wish further to know what would legally be considered actual present service then? Would pensioners who may be called upon to drill for a few days or weeks in a year in a time of peace or otherwise be considered in active or present service? An answer in your next number will oblige.

I remain, &c.,

W. A. W.,

Deputy Recr., Etobicoke.

[It may be taken as a rule that all property, real and personal, not exempted from taxation by 16 Vic., cap. 182, is liable under that Act to be taxed.

The language of s. 2 is "that *all* land and personal property in Upper Canada shall be liable to taxation, *subject* to the exemptions hereinafter specified."

The eighth class of exemptions thereafter mentioned are, first, the *full* or *half* pay of any one in any of Her Majesty's Naval or Military services; second, or any pension, salary, or other gratuity or stipend derived by any person from Her Majesty's Imperial Treasury or elsewhere out of this Province; third, and the personal property of any *such* person in such Naval or Military service on *full* pay or otherwise in actual then present service, nor shall *such* person be liable to perform statute labor or to commute for the same." "Such person"—what

person? The answer is, first, any person "in Naval or Military service on *full* pay;" secondly, "or otherwise in *actual* then *present* service."

As applied to soldiers or men in actual service the law is clear: but a *pensioner* may be deemed for some purposes "in actual present service." This causes us to fall back upon 14 & 15 Vic., cap. 77, intituled "An Act to authorize the employment of pensioners and others as a Local Police Force." It is enacted by s. 1, that "any of the Naval or Military Pensioners who, under the Acts of the Parliament of the United Kingdom in force in that behalf shall be *enrolled* as a local force for the preservation of the peace in any part of this Province, &c., and by s. 4, "that the pensioners and other members enrolled *as members of such Police force* shall, while so *enrolled*, be exempt \* \* from statute labor or any capitation tax in lieu thereof, and that any *such* pensioners while so enrolled shall be exempt from taxes on any property of which the occupation may be allowed them by the Imperial or Military authorities, and of which the title shall remain in the Crown."

The answer to our correspondent then is as follows:—No Military or Naval Pensioner is in time of peace exempt from the performance of statute labor or the payment of commutation money in lieu thereof, unless enrolled as a member of a Police Force for the preservation of the peace in some part of this Province.—Eps. L. J.]

*To the Editors of the Law Journal.*

GENTLEMEN,—I beg to enquire through the *Law Journal*,—

1. Can the holder of any ministerial office appoint a deputy to act for him?

2. Is the office of Registrar of the Surrogate Court a Ministerial office? And, if it is,

3. Is it one of those to which the holder can appoint a deputy?

By answering the above you will much oblige.

Yours truly,

A SUBSCRIBER.

November 19, 1858.

1. The rule is that a judicial officer cannot make a deputy unless he has a clause in his patent to enable him to do so, because his judgment is relied on in matters touching his office. This rule does not extend in general to ministerial officers; but notwithstanding a ministerial officer is not allowed to appoint a deputy, if the office is one, intended to be performed by him in person. The appointment of deputies is not to be encouraged. When intended, as in the case of Sheriffs or Registrars, the Legislature makes mention of deputies; and when no such mention is made the presumption is against the right to depute.

2. The office of Registrar of the Surrogate Court is a Ministerial office.

3. But for the reasons mentioned in the latter part of division 1, we doubt the power of the officer to appoint a deputy *qua* such.—Eps. L. J.]