of the Rolls expressly guarded himself in that case against being supposed to say that in every case in which a suit is instituted by a foreigner having a temporary residence in this country he may be compelled to give security for costs. See *Swanzy* v. *Swanzy*, 4 K. & J. 237. In 1859 some consideration was given to this point in our own Court of Chancery in *O'Grady* v. *Munro*, 7 Grant 106, and the holding there was in accordance with *Tambisco* v. *Pacifico*.

In the Irish Courts, *Oliva* v. *Johnson* has been considered overruled, and the authority of *Tambisco* v. *Pacifico* has repeatedly been recognized: See *Sisson* v. *Cooper*, 4 Ir. L. R. 40; *Allain* v. *Chambers*, 8 Ir. C. L. R. app. vii. (1858). So in the United States, Greenleaf in his "Overruled Cases" treats the case in the Queen's Bench as over-ruled by the later case in the Exchequer.

The various text books afford curious examples of the uncertainty that has obtained on the points under discussion: Maddock's Practice cites *Willis* v. *Garbutt* as laying down the rule. Morgan & Davey refer to *Cambottie* v. *Inngate* as the governing case. Daniell's Practice lays down the practice as determined by *Oliva* v. *Johnson*, and does not even cite *Tambisco* v. *Pacifico*, while in Chitty's Archbold (12th ed. p. 1415), nearly all the common law cases are cited, but the true practice is left undetermined in the text. It is submitted that the proper rule is between the extremes of the holding in *Oliva* v. *Johnson*, and that in the earlier Common Pleas and Equity cases. It is not necessary on the one hand to shew a permanent residence within the jurisdiction to exempt a foreigner from giving security, nor is it sufficient on the other merely to shew that he is actually within the jurisdiction at the time of the application. This in fact is the view adopted in the latest English case on the subject, where the application was made in 1860 in the Divorce Court before Sir Creswell Creswell. The important cases on both sides of the question were cited, and that very eminent judge laid down the rule thus, "where the party, being a foreigner, is in England, and there is no reason to suppose that he is on the point of going away, no order will be made for security." And he held in opposition to *Oliva* v. *Johnson* that the affidavit in answer to the application need not state an intention of permanent residence, but that it was sufficient to shew an intention to remain till the suit was disposed of: *Crispin* v. *Doglione*, 1 Sw. & Tr. 522.

REPLEVIN—GOODS IN THE CUSTODY OF THE LAW.

An important point has been decided in Chambers by Mr. Justice Gwynne on the law of replevin, which it is desirable should be made public as soon as possible. It came up on an appeal from a decision of the Clerk of the Queen's Bench, who had refused an order for a writ of replevin against a guardian in insolvency on the ground that no such action would lie under the second section of the Replevin Act. It is very seldom that an appeal from Mr. Dalton's ruling is made, and when made more seldom is it successful; this one may, therefore, be noted as the exception which proves the general soundness of his decisions; and as to this point, it has, we believe, hitherto been supposed, amongst the profession, that the law was as laid down by Mr. Dalton.

We do not intend at present to state the facts of the case in full, as it will shortly be reported; but the point decided is simply that goods in the possession of a guardian or official assignee in insolvency are not in "the custody of any sheriff or *other officer*" within the meaning of sec. 2 of Con. Stat. cap. 29. In other words that goods may be replevied from a guardian or assignee in insolvency, notwithstanding the second section of the Replevin Act.

The reasons which the learned Judge gives for his opinion, in a very elaborate judgment, are to our minds conclusive, notwithstanding the apparently comprehensive words of the section; but we cannot at present state them at length. He holds, however, that the term, "sheriff or other officer," means a sheriff, or such an officer as his deputy or bailiff, or a coroner, "to whom the execution of such writ of right belongs;" and that what is declared by the statute not to be authorized is the replevying the goods which *such* sheriff or other officer shall have seized under or by virtue of the process in his hands; and that when the goods are delivered to the guardian or assignee, in discharge of the sheriff, the former holds them, and has only a right to