

[We cannot agree in the gloomy anticipations of our correspondent, and the remedy he proposes we fear would not answer, nevertheless there is a good deal to be said on both sides, and we shall not at present commit ourselves to any decided opinion.]

Just now we prefer to allow our correspondents to speak, and would be glad to hear the opinions of other officers on the subject. There has from the first been a *mis-move* in establishing too many divisions in each County, owing we believe more to the eagerness to multiply offices than to any urgent demand from the general public. It may not be too late to rectify this evil—at all events it may be arrested.

We threw out the suggestion whether a criminal jurisdiction for summary convictions might not with great advantage to the public be conferred on Division Courts, and if we are rightly informed some measure of the kind was either introduced or spoken of last session.

Now is the time to discuss the matter—will our friends favor us with their views?—Eds. L. J.)

To the Editors of the Law Journal.

Warwick, 16th Sept., 1860.

GENTLEMEN,—May I request you will give your opinion whether a bailiff is entitled to mileage on an execution which he has to return *nulla bona*? There appears to be different opinions on the subject. If they are not, it is a great hardship that they should travel several miles for nothing, especially since the exemption law is in force, which makes half the executions to be returned "No goods."

I remain, Gentlemen,

Your obedient Servant,

JAMES F. ELLIOT,

Clerk 2nd Div. Court Co. Lambton.

[Our correspondent will find his question answered in the negative more than once before in this journal.—Eds. L. J.]

U. C. REPORTS.

QUEEN'S BENCH.

Reported by CHRISTOPHER ROBINSON, Esq., Barrister-at-Law.

SCOTT V. THE TRUSTEES OF UNION SCHOOL SECTION No. 1, IN BURGESS, AND No. 2, IN BATHURST.

School trustees—Execution against—Sale of school house.

Held, that land conveyed to school trustees for the purpose of a school, could not be sold under execution against them on a judgment obtained for the money due for building the school house.

EJECTMENT for half an acre of land of the rear part of No. 12, in the 10th concession of Burgess.

At the trial at Perth, before *Richards, J.*, a deed from John Allan to defendants, dated 17th June, 1856, was put in and execution admitted.

This deed was made between the said John Allan of the first part, Ann Allan, his wife, of the second part, and the trustees of the united school sections No 1, of the Township of Burgess North, and No. 2, of the Township of Bathurst, both in the County of Lanark and province aforesaid, of the third part; and by it, in consideration of 5s., the said John Allan conveyed to the said parties of the third part and their successors in office for ever, the land in question, "in trust for the use of a common school in and for the united school sections No. 1, of the Township of Burgess North, and No. 2, of the Township of Bathurst, both in the County of Lanark, and Province of Canada aforesaid. Provided always, and it is the true intent and meaning of these presents, and of the parties hereto, that if the said above described lands and premises shall at any time hereafter cease to be used for common school purposes for the space of three years at any one time, then and in

that case the same shall immediately revert to the said party of the first part, his heirs and assigns, and he, she, or they shall and may enter in and upon, and the same shall and may occupy and enjoy, as fully to all intents and purposes as if these presents never had been made; the said trustees or their successors in office being allowed to remove any building or erections thereon before the expiration of said three years." Then followed the usual covenants for title, and bar of dower.

A judgment in favour of the plaintiff against defendants, entered in the Common Pleas on the 15th March, 1858, for £171 2s. 2d., was also admitted, and the issuing and return of execution against goods; and writs of *fi. fa.* and *ven. ex.* against lands were produced, and a deed from James Thompson, sheriff, to the plaintiff of the *locus in quo*, dated the 5th of September, 1859.

It was objected that the interest of defendants under the deed to them was not one that could be seized and sold under a *fi. fa.* against lands, and a verdict was taken for the plaintiff, subject to the opinion of the court on that point.

Richards, Q. C., for the plaintiff.

Deacon, contra, cited *Simpson v. Carr*, 5 U. C. Q. B. 826; *Doe Hull v. Greenhill*, 4 B. & A. 684; *Roe v. Peggie*, 4 Dougl. 809; *Scott v. Scholey*, 8 East, 467; *Baxter v. Brown*, 7 M. & Gr. 198; *Hill on Trustees*, 239; *Grant on Corporations*, 511, 512.

The statutes bearing upon the question are referred to in the judgments.

ROBINSON, C. J.—The plaintiff having a claim upon the defendants, the school trustees, for building a school house for their union section, obtained against them in the Court of Common Pleas an execution thereupon for £171 2s. 2d., and taking out a writ against the lands of the trustees of the said school section had the site of their school house and the house itself sold at sheriff's sale, and the plaintiff in the action bought it at the sale for £50, and on the 5th day of September, 1859, the sheriff made a deed to him of the land.

The judgment and execution were against the trustees in their corporate name.

A copy of a deed, dated the 17th of June, 1856, by which John Allan and his wife conveyed the site of the school house to the trustees of the united school section, "and to their successors in office," is given in the case stated, from which it will be seen that the trustees (that is, for the time being) were to hold the land in trust for the use of a common school in and for the united school sections.

The first question is, whether the land was subject to be sold, as it was, to satisfy Scott's debt, due to him by the trustees for building the school house, as it is admitted by the parties? I think it was not so liable.

The school trustees are a board for taking care of and managing (among other duties) the school house in which the common schools are to be kept for the benefit of the inhabitants. They are in the light, I think, of trustees for the inhabitants as regards the school houses and the sites on which they are built. If they were individuals against whom a judgment had been entered for a debt due by them jointly, any property which they held as trustees for others could not be sold to satisfy the judgment.

The case was argued as if the question were rather whether the property could not be sold under the 10th section of the Statute of Frauds, 29 Car. II., ch. 3, but that is a provision applying only to judgments against persons for whom lands, &c., are held by others in trust, that is, upon a naked trust for their benefit, when no special confidence is reposed in the trustee, but he is merely to pay over the rents and profits to the *cestui que trust* against whom the judgment has been rendered. This is clearly no case of that kind. The inhabitants of the school division are the *cestui que trust* in the case. The defendants are not in that position.

But it is argued, and not unreasonably, that the debt in this case being due to the plaintiff for building the school house which he desires should be seized in execution, it is not unjust that he should be able to seize the building in execution to pay the debt. If we look, however, to the extent to which such a claim might be pushed in similar cases, we should see the embarrassment that would ensue.

In this case, to say nothing of the site, the school house itself cost £150 or more, and the whole has been bid off by the plaintiff