request first made to them for that purpose by the parties, and in the manner designated; that is, that a request of a majority of the freeholders or householders, in the school sections to be affected by the change, must be expressed at a public meeting to be convened by the school trustees for that purpose. No such meeting, and consequently no such request preceded the passing of this by-law.

In my opinion, therefore, it should be quashed.

THE QUEEN EX REL. WILLIAM SWAN v. JAMES ROWAT.

(*Reported by C. Robinson, Esq., Barrister-at-Law.*)

Quo-warranto—Judgment in favor of defendant—Death of Relator—Costs.

Q. B. Trinity Term, 1855.

Mr. Helliwell moves to amend the order of Mr. Justice Richards, in this case, by awarding to the defendant his costs of defence.

It was a quo warranto case, tried before Mr. Justice Richards, to determine the right of the defendant to hold his seat as a township councillor, to which he had been returned as duly elected. The learned Judge determined that the defendant was entitled to retain his seat, but conceiving that he had a discretion to withhold costs, and that there were circumstances in the case which made it proper to do so; he gave judgment in favor of the defendant, but did not give him his costs against the relator.

The defendant contends that the relator having failed must be ordered to pay costs, and that there is no discretion to adjudge otherwise, and he obtained a rule *nisi* last term, to amend the judgment in that respect.

On the return of the rule, this term, affidavits are filed shewing that the relator died on the 6th July last, that is, after this rule *nisi* had issued, and before its return.

It appears that most of the Judges, in cases before them in Chambers, have acted upon the provision respecting costs in the Statute as if it were discretionary, to the full extent, of withholding costs from the successful party. This being so, we shall not reverse this order, under the circumstances of the relator, against whom we are desired to give costs, being no longer living. Upon reference to the Judges of both Courts, we find that a majority of them place the same construction upon the clause in question, as was placed by Mr. Justice Richards.

Rule discharged.

DALE *v.* COOL AND HUGHES.

Division Court Bailiff—Notice.

4 C. P. R. 460.

The bailiff of a Division Court, acting in the discharge of his duty as such bailiff, is entitled to notice of action under the division court acts, and that the objection is open to him under the plea of "not guilty per statute."

Writ issued 16th February, 1854; declaration, 11th April, 1854.

Trespass—*De bonis asportatis.* Pleas: by defendant Cool—Not guilty *per statute*, and not possessed; by defendant Hughes—1st, not guilty; 2nd, not possessed; 3rd and 4th, special pleas, justifying under a Division Court execution, against the goods of one Egan, and alleging an assignment of the goods from Egan to the plaintiff fraudulent as against creditors.

At the trial the plaintiff gave *primâ facie* evidence of a bill of sale duly registered. It appeared that after the assignment Egan departed, leaving his wife in the house where he had resided and kept tavern; that she remained there in possession of the house and goods for three or four weeks, and then left, going to the plaintiff's, shortly before the seizure. It appeared Cool had seized and sold the goods under, as alleged, an execution at Hughes's suit against Egan, being apparently indemnified by Hughes in so selling; but no execution or indemnity appears to have been regularly proved.

At the close of the plaintiff's case *Eccles*, for defendants, moved a nonsuit as to Cool, on the ground that he was entitled to notice of action as having acted in the execution of his duty as bailiff under the Division Court Act; and as to Hughes, because he was not proved to have directed or acted in the alleged trespass to plaintiff's goods. As to Hughes, it was left to the jury, who found a verdict in his favor on the plea of not guilty, and for plaintiff seemingly on the other issues. They found against Cool £65 damages, with leave reserved to move a nonsuit if entitled to notice of action. The jury found that he acted in the execution of his duty as bailiff.

During this term *Eccles* obtained a rule *nisi* to enter a nonsuit pursuant to leave reserved.

Durand shewed cause, and contended that the 14 & 15 Vic. c. 21, applies to bailiffs as well as justices of the peace; that this execution being against Cool, the bailiff had no right to seize plaintiff's goods; that Cool could have had the title to the property tried under the provisions of the statute; that Cool was not acting *bonâ fide*, and therefore not entitled to notice; and that, although the verdict was in favor of Hughes, if a new trial is granted it should be as to both parties.

Eccles, in reply, contended that there is no difference between the statute 13 & 14 Vic. c. 13, sec. 107, and the one which preceded it as to requiring notice of action; that the bailiff may plead the general issue, and give in evidence the want of notice; that the action should have been brought within six months, which has not been done—the plaintiff must therefore fail—Timon *v.* Stubbs, 1 U. C. Q. B. R. 347; Sanderson *v.* Coleman, 4 ib. 119;—that a bailiff, although he knows that the property is not the property of the execution debtor, still if he is ordered he must seize, and is entitled to notice—Beechey *v.* Sides, 9 B. & C. 806; Cook *v.* Leonard, 6 B. & C. 351; Smith *v.* Hopper, 9 Q. B. 1005; Smith *v.* Regina, 18 L. J. 301; Cox *v.* Reid, ib. 216;—that a new trial may be granted against one party—Davis *v.* Moore, 2 U. C. Q. B. R. 180.

MACAULAY, C. J.—The long-continued possession of Egan's wife, &c., constituted evidence sufficient to go to the jury in support of the *bona fides* of Cool's conduct if entitled to notice, assuming that the goods were really the plaintiff's property at the time, and this whether Cool was indemnified or not.

The indemnity might implicate Hughes, as adopting, if not directing, the seizure and sale for his benefit, without depriving Cool of his right to defend himself on any ground of defence open to him under the statute—Timon *v.* Stubbs (1 U. C. Q. B. R. 347), Booth *v.* Clive (10 C. B. 827); that defendant is entitled to notice Jones *v.* Elliott (11 U. C. Q. B R. 30). On reference to the 13 & 14 Vic. c. 53, sec. 107, the 14 & 15 Vic. c. 51, sec. 5, and the 16 Vic. c. 177, sec. 7, it appears to me that the defendant was entitled to notice, and that the objection is open to him under the plea of not guilty per statute. It is clear he was acting under the statute sufficiently to entitle him to notice, and the last act expressly authorizes the objection under such plea—the case cited from 1 U. C. Q. B. R. 347 was before the last act.

I can see no good reason why, since the 16 Vic. c. 177, sec. 7, the defendant may not raise the objection under the general issue per statute, if he could not have done so before.

MCLEAN, J., and RICHARDS, J., concurred.

Rule absolute.

REGINA EX. REL. GLEESON *v.* HORSMAN.

A county court judge cannot grant a *quo warranto* during term time in the superior courts.

13 Q. B. R. p. 140.

Eccles obtained a rule calling on the relator to shew cause why the order made by the judge of the County Court of the