

"We command you that you omit not by reason of any liberty in your bailiwick, but that you enter the same and take E. M. Sullivan if he shall be found in your bailiwick, and him safely keep until he shall have given you bail, or made deposit with you according to law, in an action at the suit of Benjamin Wehrfritz or until" On an application to set aside the writ of capias

Held, 1. The writ was bad because it did not state the nature of the cause of action.

2. It is not necessary for a person arrested under a writ of ca. re. to enter an appearance before applying for his discharge.

3. The defendant having asked for costs, the order for his discharge should provide that no action be brought against the plaintiff or the sheriff by reason of the capias or the arrest.

Harold Robertson, for the summons. *Bloomfield*, contra.

Irving, J.]

IN RE ASSESSMENT ACT.

[May 1.

Assessment—Income of locomotive engineers—Taxation.

Question referred by Order in Council to a judge of the Supreme Court for consideration, the question being "whether the earnings of railway locomotive engineers were income within the meaning of that term as employed in the Assessment Act prior to the amendment of the said Act by the Assessment Act Amendment Act, 1901, and whether such earnings were liable to taxation.

Assessment Act, R.S.B.C. 1897, c. 179, s. 3. provides in effect that with certain exceptions the annual income of every person in the Province in excess of \$1,000.00 is liable to taxation, and before 1901, the Act contained no definition of "income." Prior to 1901, the earnings (in excess of \$1,000.00) of railway locomotive engineers who received pay according to the number of miles they ran their locomotives were assessed. The contention on their behalf was (1) that earnings not the result of capital, but the result of personal exertions are not "income" and (2) that in order to arrive at amount of income a deduction from gross earnings must be made for reasonable living expenses.

The question was answered in the affirmative.

Wilson, K.C., for engineers. *Maclean*, D.A.G., for Crown.