Execution nor the Cognovit were obtained for any fraudulent purpose whatever, but for a just debt: and contended that theirs was only a *Division Court* Attachment, and therefore could not stand against a judgment of a *Superior Court*; moreover, theirs is only a writ of *Attachment*, while ours is a writ of *Execution*, and consequently takes precedence of theirs, and the Sheriff had a right under it to take the property out of the hands of the Bailiff of the Division Court: (*Francis v. Burr*, 11 U. C. R. 558.)

As to the amount of the endorsement, he argued that it was evidently a mistake, but that defendant is the only party who could take advantage of it.—1 U. C. R. 337 and 9 Dowl. 1029.

HAGARTY, J.—I think there is no ground for the charge of fraud in this case. We cannot presume anything against this judgment from the mere statement of the wife after her husband had been away, made in conversation, asserting that this debt was paid.

As I understand the facts, this *Fi. Fa.* was placed in the Sheriff's hands the same day that the Division Court Bailiff seized the goods on warrant of Attachment.

If this were a contest between a *Fi. Fa.* and an Attachment from the Superior Courts under the C. L. P. Act, I would be inclined to decide that this *Fi. Fa.* could not prevail, not being issued on a judgment such as the Act protects, *i. e.*, when a previous process had been served, &c. But in my judgment (and especially after the decision in *Francis v. Burr*, 11 U. C. R. 558) the statute only applies to writs of Attachment unchanged by the Act, and not to warrants of Attachment from Division Courts.(a)

The delivering of this writ to the Sheriff binds the goods under the statute of Frauds, and I do not think that being attached by an Inferior Court at the suit of one who was not then a judgment creditor, is to defeat this execution.

There are sound reasons for considering that Division Court warrants of Attachment, granted as they are for causes for which Attachments could not go in the Superior Courts, should not be allowed to defeat the legal effect of executions legally recovered in this Court.

As to the right of these Division Court applicants to impeach the consideration or validity of this judgment, I am at present against their right to be heard on a summary application of this nature. I see no privity between them and this execution defendant, and I leave them to contest these matters in such other way as they may be advised: (9 Dowl. 1029, 1 U.C. 337.)

Summons discharged.

THE QUEEN EX REL. GORDANIER v. PERRY AND HUFFMAN, (Returning Officer.)

Practice—Quo warranto—Costs—Power of agent of candidate to object to voter.

A judge in Chambers has power under the Statute to distribute the costs in *Quo Warranto* cases between the parties (*i. e.*, each party to pay his own costs instead of ordering either party to pay all.) An *agent* of a candidate at an election, though not an elector himself, may object to voters and require the Returning Officer to administer the qualification oaths.

(May 12, 1857.)

HAGARTY, J.—This case depends on the question whether certain votes given for the successful candidate (Perry) at a Township Reeve election, objected to at the time, and to whom the returning officer Huffman refused to administer the qualification oaths, can be allowed to remain on the poll; 89 votes were recorded for Perry—84 for the relator.

The relator's case is, that 14 votes were received for Perry, to which his agent objected, and to whom Huffman refused to put the oath.

Ten of these fourteen voters file affidavits showing their qualifications, and that they were clearly entitled to have voted as they did. Hardly any attempt is made in relator's affidavits to impugn the actual qualifications of the voters objected to. The case seems to rest on the technical ground that the returning officer's refusal to administer the oath entitles the relator to have them struck off the poll.

The difficulty seems to have occurred thus—the returning officer seems to have considered that no person but a candidate or duly qualified voter has a right to require any voters to be sworn. One Dallas, a non-resident and non-voter, attended at the poll as agent for the relator, and he it was who required the oath to be administered, and the returning officer refused to recognize him. I gather from the affidavits that the relator himself, though present most of the time, in no case asked to have any voter sworn, but that his agent demanded it in several cases. The affidavits are not clear on this point, but this seems the strong impression in my mind that the relator was present and never interfered, although hearing the returning officer declining to act on Dallas' request.

The statutes give no very definite direction as to the manner in which voters may be sworn, nor as to what constitutes a sufficient requirement to the returning officer to administer the oath. My opinion is that the returning officer should on request of either of the candidates or his agent, (whether such candidate was or was not a qualified elector) have administered the oath.

Anxious as we should always be to uphold all municipal elections against mere technical objections, one would naturally expect that if a returning officer erroneously or otherwise object to the demand of the agent as an unauthorised intermedler, in presence of the candidate whom he represented, the principal should at once avow his act, if he desired the benefit of it, and not stand by in silence, hearing his agent objected to, and not interposing. I repeat that it is not expressly stated that the relator did this, but such is the strong impression left on my mind by the affidavits.

The statute 12 Vic., cap. 81, sec. 122, directs that any person named in the collector's roll shall be entitled to vote at such election for the same without any other enquiry, and without taking any other oath that he is the person named in such collector's roll; that he is of the full age of 21, and is a natural born or naturalized subject of Her Majesty; that he is resident in the ward, &c., and that he has not before voted at such election. Section 124 empowers the returning officer to administer all oaths and affirmations required to be administered or taken at any such election.

I find no prohibitory words in the statute declaring that no person shall vote unless on being required he takes the oath, &c. Nor do I find that in the present case the omission of the returning officer to put the required oaths had any influ-

(a) See C. L. P. Act, note r, to sec. 85.