cause why M. should not be released on the ground that both fine and imprisonment could not be awarded, was obtained; on the return of the writ it was

Held that s. 958 of the Criminal Code gave such power.

Slipp supported *habeas corpus.*

Blair, Jr., for the Crown.

COUNTY COURTS.

COUNTY OF SAINT JOHN.

FORBES, Co. J.] [April, 1895.

STICKNEY *v.* RIDEOUT.

Practice—Magistrate's Court—Plaintiff suing by initials.

On review from a magistrate's court it was

Held, that a plaintiff cannot sue by initials in a magistrate's court.

Armstrong in support of review.

Allen contra.

FORBES, Co. J. In Chambers. [Dec. 17, 1895.

WHITE *v.* DEWITT.

Practice—City Court—Excess of jurisdiction—Plaintiff need not abandon where excess is interest and not claimed in the particulars.

W. sued D. in the City Court of St. John (which has jurisdiction in actions of debt where the amount claimed does not exceed $80) to recover the amount of a promissory note for $75, and one year's interest on the same. The cross-examination of the plaintiff disclosed the fact that four years' interest was due and unpaid. Plaintiff was non-suited on the ground that the amount due was in excess of the jurisdiction and plaintiff should have abandoned the excess. The plaintiff stated he did not claim the excess. On review it was

Held—1. That as the writ and particulars showed the case to be within the jurisdiction of the Court, the jurisdiction was not taken away by the plaintiff's statement that an additional amount of interest, sufficiently large to exceed the jurisdiction, was also due.

2. That where the excess was interest, and therefore not debt, but damages, the plaintiff need not abandon.

Non-suit ordered to be set aside and verdict entered for plaintiff.

Chapman v. *Doherty*, 25 N. B., 271; Bills of Ex. Act, 1882, s. 57; B. & L., pp. 11, 52; *White* v. *Mackin*, 1 Kerr, 94; and *Isaac* v. *Wyld*, 7 Exch., 163, were referred to.

W. H. Trueman, for plaintiff.

Armstrong, Q.C., *contra.*