cord, the objection to his evidence seems to be reduced to the ground of mere pecuniary interest, which is no longer an objection. The defendants might have pleaded in abatement, if they knew of Mills being a partner; but it is very possible they did not know it, and there is much force in the argument, that admitting the witness under such circumstances may lead to abuse, for a partner may be intentionally omitted to be joined, in order that he may make his appearance on the trial as a witness. That is true, but still the act must be carried into effect, and I hardly think that such a case comes within the meaning of the exception of persons on whose behalf an action is brought. We need not, however, pursue that question further, for the plaintiff's witness was received, and the verdict is in favour of the party objecting, so that can form no ground for our interfering.

The jury seem not to have credited fully his account of the transaction, and when we look at the whole case, we cannot say that they certainly came to a wrong conclusion.

HAWKINS v. PATTERSON.

Where a judge's order has been obtained to alter the *venire facias* to another assize, it is no objection that the trial took place without the alteration having been actually made.

In this case, *Eccles*, Q. C. moved for a new trial, on the ground that the *nisi prius* record did not authorize the trial, there being no alteration made in the *venire facias* from the previous assizes; and on affidavits.

Upon the affidavits a new trial was granted, and that part of the case is not material to be reported. As to the defect in the record, ROBINSON, C. J., in delivering the judgment of the court, said:—

"There is an order of a judge endorsed, allowing the *venire* to be altered to the assizes in October, but the venire for the previous assizes in May is left as it was, with a copy of the *fiat* for the alteration written opposite to it in the margin. The right day might be inserted at any time according to the judge's *fiat*.

IN RE STODDART AND THE MUNICIPALITY OF THE UNITED TOWNSHIPS OF WILBERFORCE, GRATTAN, AND FRASER.

By-law—Overseers of highways—Statute labour.

A by-law directing that the overseers of highways should bring any person refusing or neglecting to perform statute labour, before the reeve of the municipality, or the nearest J. P. who upon conviction, should impose a fine of 5s. for each day's neglect, with costs, and adjudge that the payment of the said fine and costs, should not relieve him from performance of the labour; and in default of payment, should issue a distress warrant.
Held good.

Phillpotts obtained a rule on defendants to show cause why their by-law, passed on the 15th of April, 1856, No. 18, should not be quashed in part—that is, as to the 6th section thereof—with costs, on the ground that such part is void and illegal, and beyond the power of the municipality to pass.

The by-law moved against was passed for defining the duties of overseers of highways, and determining the fines to be paid by persons neglecting to perform statute labour.

The sixth clause was in these words, "And it is further enacted that the said overseers of highways are hereby directed and required, on the refusal or neglect of any person within their section liable to perform statute labour, to go before the reeve of this municipality, or the nearest justice of the peace, and make oath of the refusal or neglect of such person, whereupon the said reeve or justice shall issue a summons to have the party so offending brought before him, the said reeve or justice, and upon conviction shall impose a fine of five shillings for every day he has refused or neglected to perform the statute labour due by him, with the costs of prosecution, and adjudge that the payment of the said fine and costs shall not relieve him from the performance of the said statute labour, but that the defaulters shall still be required to perform the same, notwithstanding the payment of the said fine and costs; and in default of the payment of the same, the said reeve or justice of the peace shall issue a distress warrant against the goods and chattels of the defaulters, that the amount of the fine and costs may be recovered by sale of the same."

The objections were that there is no provision made by statute 16 Vic. ch. 182 (the assessment act), for enabling municipalities to enforce the performance of statute labour, or to inflict penalties for the non-performance. That no by-law had been passed, authorising a commutation of the labour by paying money in lieu, according to the 36th section of 16 Vic., ch. 182; and that there was no special or other promulgation of this by-law, according to the 155th section of 12 Vic. ch. 81, as amended by 14 & 15 Vic., ch. 129.

Richards showed cause, *Conner*, Q. C., supported the rule.

ROBINSON, C. J., delivered the judgment of the court.

We see no valid objection to the sixth section of this by-law. There is no question about commutation. For all that is shown, all persons in these townships have to perform their statute labour when warned, and this by-law provides only for enforcing the performance of such labour, and in a manner in which the municipality has power by law to enforce it—that is, by fine. This authority is given by 12 Vic., ch. 81, sec 31, sub sec. 28.

We cannot conceive what can have been meant by the last objection taken to this by-law—that it was not promulgated according to 12 Vic., ch. 81, sec. 155, as amended. That provision applies only to a certain class of by-laws very different from this.

Rule discharged, with costs.

THE GREAT WESTERN RAILWAY COMPANY v. ROUSE.

Railway—Assessment of.

Under the 16th Vic., ch. 182, sec. 21, only the land occupied by a railway is subject to assessment, and not the superstructure.
The decision of a county court judge is not final.

This was an action of replevin, brought by the plaintiffs against the defendant to replevy two hundred cords of wood, lying at the Princeton station, in the township of Blenheim, in the county of Oxford, and of the value of £62 10s.; and by the consent of the parties, and by the order of the Hon. Mr. Justice Burns, dated 3rd of February, according to the Common Law Procedure Act, 1856, the following case was stated for the opinion of the court, without any pleadings:—

1. The Great Western Railway Company's line of railway passes through the township of Blenheim, which is a Municipal Corporation under the Upper Canada Municipal Corporations Acts.

2. For the year 1856, the assessor for the Municipal council assessed the railway company thus:

Land in roadway through township $124\frac{75}{100}$ acres...	£1,000	0	0
Station grounds $5\frac{75}{100}$ acres	1,000	0	0
Value of roadway.....	30,000	0	0
	£32,000	0	0

3. That the item of £30,000 is for the superstructure of the road, in addition to the value of the land itself, which is included in the first sum of £1000.

4. That the land itself was assessed according to the average value of land in the locality, and the sum of £1000 expresses such value excluding superstructure.

5. That the railway company appealed to the court of revision of the municipal council, who confirmed the assessment made by the assessor, and from this decision the railroad company appealed to the judge of the county court, who, upon hearing the matter, amended the roll thus:

"Station and buildings.....	£1,000	0	0
Roadway and superstructure.....	21,000	0	0
	£22,000	0	0

6. That the judge, in the item of £21,000, included the land, and also the superstructure, which he reduced to £2000 per mile, instead of £3,000 per mile as set down by the assessor.

7. That the superstructure at £2,000 per mile includes rails, ties, chairs, and gravel for ballast.

8. That the defendant is the regular authorised collector for the municipal council, and has seized the wood to recover £44 3s. 5½d. the amount due by the plaintiffs for their proportion of the year's assessment according to the valuation of £22,000.