

*GRAY v. WILLCOCKS.*

## AN OLD CAUSE CÉLÈBRE.

## I.

Ontario solicitors who issue writs of *fi. fa.* as of course do not in general know of the troubles of their predecessors in issuing process during the first years of the existence of Upper Canada. When the Court of King's Bench was first instituted by the Provincial Statute of 1794, 34 Geo. III., c. 2, no subject had any transferable property in land within its jurisdiction; but that was soon a thing of the past, and the Court ordered a writ of *fi. fa.* against goods and lands as, of course, in any judgment, under the provisions of the Act of 5 Geo. II. which made lands in the Plantations or Colonies subject to simple contract debts, and provided (sec. 4) that in satisfaction of all debts established by judgment of the courts such execution as would go against goods and chattels should operate also against lands and tenements. This was, of course, a marked departure from the English writ of *Elegit*.

Then came the Provincial Act of (1803), 43 Geo. III. (U.C.) c. 1 (assented to by the King on January 4, 1803, after being reserved) which provided that a writ of *fi. fa.* should issue in the first instance only against goods, a *fi. fa.* (lands) should not issue till after the return of the *fi. fa.* (goods) and the sheriff was not to sell until after 12 months from the time he received his *fi. fa.* (lands). After this Act the clerk issued a *fi. fa.* (goods), as of course, without consulting the court, but deemed it requisite to receive further order before he issued the execution against lands.

John Gray had obtained judgment against William Willcocks. In Michaelmas Term, 46 Geo. III., Nov. 6, 1805, Mr. Scott (afterwards Attorney-General and Chief Justice) obtained from the court (Powell and Thorpe, JJ.) a rule calling upon the defendant to show cause why a *fi. fa.* (lands) should not issue, on the judgment in debt, the *fi. fa.* (goods) being returned, and it was directed