there should be a clause in the order directing the payment by the client of the amount to be found due to the solicitor.

Semble, also, that the order for taxation under Rule 443 should, under the authority of sub-sec. "*d*" of that Rule, where it is made upon the client's application, contain an order for the payment by him of the amount to be found due upon the reference, but when it is made upon the solicitor's application, should contain no such order. The solicitor should be entitled to add the costs of the reference to his claim only in the event of the client appearing upon the reference.

Millar v. *Cline*, 12 P.R. 155, distinguished.

In re Harcourt, 32 Sol. J. 92, followed.

H. H. Macrae, for the solicitor.

No one for the client.

Armour, C. J.] [Jan. 16, 1888.

LAING *v.* SLINGERLAND.

Arrest—Capias—Affidavit—"Intent to defeat."

The use in the affidavit upon which an order for the issue of a *ca. re.* was granted of the words "intent to defeat," instead of "intent to defraud," the latter being the words prescribed by R. S. O. c. 67, s. 5.

Held, not fatal to the arrest.

Neven v. *Butchart*, 6 U. C. R. 196; *Hargreaves* v. *Hayes*, 5 E. B. 272; *McInnes* v. *Macklin*, 6 U. C. L. J. 14; *Swift* v. *Jones*, 6. U. C. L. J. 63; *Bamberg* v. *Solomon*, 2 P. R. 54, referred to.

Aylesworth, for the plaintiff.

Watson, for the defendant.

Street J.] [Jan. 21, 1888.

In re ST. CATHARINES AND NIAGARA CENTRAL RAILWAY CO. AND BARBEAU.

Railway company—Incorporation by Provincial Act—Subsequent legislation by Parliament of Canada—Applicability of ss. 4 to 39 of the General Railway Act of Canada.

A railway company, incorporated by an Act of the Ontario Legislature, was thereby authorized to construct, equip, and operate a railway between certain points.

By an Act of the Dominion Parliament, the Governor-in-Council was authorized to grant a subsidy to the company; and by another Act of the Dominion Parliament the company's railway was declared to be a work for the general advantage of Canada, and the company was authorized to build a branch line. No further powers of any kind were conferred upon the company by the Dominion Parliament.

Held, that the effect of the declaration that the railway was a work for the general advantage of Canada was to bring it under the exclusive legislative authority of the Parliament of Canada, but that the Acts of the Ontario Legislature previously passed were in no way affected; that the railway in question was not one "constructed or to be constructed under authority of any Act passed by the Parliament of Canada" (see sec. 3 of the Railway Act of Canada R. S. C., chap. 109); and, therefore, secs. 4 to 39 of R. S. C., chap. 109 did not apply to it; and a motion to a judge of the High Court of Justice, under sec. 8, for a warrant of possession of certain lands was refused.

Aylesworth, for the company.

Robinson, Q.C., for the landowner.

Street, J.] [Jan. 21, 1888.

MCINTOSH *v.* ROGERS.

Vendor and purchaser—Verification of abstract—Mortgage thirty-six years old, presumption or proof of payment—Registration of instrument, evidence of—Possessing title, evidence of—Election to make perfect title, notwithstanding terms of contract.

Upon a reference as to title in an action to enforce specific performance of a contract for the sale of land, a solicitor's abstract was delivered by the vendor, and certain objections made by the purchaser to the verification of it. The purchaser appealed from the Master's rulings upon these objections:

(1) A mortgage made by W. in 1850 to the M. B. Society was set forth in the abstract, and it was alleged that it had been paid, and, besides that, it was barred by the Statute of Limitations, W., and those claiming under him, having been in possession for thirty-six years. The mortgage was produced, and had indorsed upon it a memorandum without date and purporting to be signed by the Secretary-Treasurer