

Mun. Cases.]

BRYAN V. CORPORATION OF ONTARIO.

[Mun. Cases.]

There is a distinction taken between wearing apparel and necessary wearing apparel in *Spitten vs. Chaffer*, 14 C. B. N. S., 714. A watch is a very useful and sometimes a necessary gear; it will inform us as to time, and direct our movements in regard to appointments; when a man is asked the time to go and meet a train or go to a meeting, he pulls out his watch and ascertains the time. In some occupations a persons cannot do without a watch. Thousands of the human race wear external habiliments which may not be necessary but are ordinary and in common use. Fashionable apparel and showy ornaments are among the foibles of our ages, still men and women do not think so, so that they embellish their persons with ornamental things and external habiliments of many kinds, and when within their means and in common use among the inhabitants they appear to become ordinary apparel.

[The learned Judge then quoted the language of the judgment in *Re Sanborn*.]

The watch and chain in question are common and inexpensive, and the insolvent owned them for several years. Following, as I do, the doctrine laid down in *Re Sanborn* I refuse the prayer of the petition. I look upon the watch and chain in question as common and inexpensive, and may be treated as ordinary apparel in ordinary use. If the watch and chain, instead of being of the value of twenty dollars, were worth \$150 or less, and had been recently purchased, I would do what was done in *Re Sanborn*; but because they are common and inexpensive and worn on the person of the insolvent for several years, I decline to make an order of delivery.

*Order refused.*

### MUNICIPAL CASES.

BRYAN V. CORPORATION OF ONTARIO.

*High Constable—Remuneration—Liability of County.*

A County Council is not liable for the salary of the High Constable.

[Whitby, July 2, 1879.]

This was an action to recover one quarter's salary, claimed to be due on 1st April, 1879,

to the plaintiff, as High Constable of the County of Ontario.

The plaintiff was appointed in 1874, by the Justices in General Sessions, under Revised Statutes of Ontario, cap. 82, sec. 1. They also proposed a resolution fixing the salary at \$75, which sum was subsequently raised to \$150, and the Treasurer of the County paid it regularly until this suit.

In February, 1879, the plaintiff was notified of a resolution of the council forbidding the Treasurer to continue such payments; whereupon the plaintiff sued.

DARTNELL, J. J. The office of High Constable was first ordained by the Statute of Winchester (13 Edw. I. ch. 2, sec. 6). They were appointed at the Courts-leet of the hundred, or franchise, over which they presided, or in default of that by the Justices in Session.

The High Constable has the superintendence and direction of all petty constables within the county; and is, in a manner, responsible for their conduct, since he is bound to notice and to present their defaults: for his neglect of which duty he is representable himself (*Burns Justice*, 644). In England he has many other duties imposed upon him by various statutes, so that he is there an important municipal officer.

The R. S. O., ch. 82, while giving the power of appointment of constables to the Justices in Sessions, is silent as to how they shall be paid. The fees are fixed by R. S. O., ch. 84: the tariff makes no distinction between high and petty constables.

Before the establishment of municipal institutions in this country, the Justices had control of the county funds, and perhaps could pass a resolution providing for the payment of the high constable's salary. Since that time these duties have been limited; the Justices have simply the power of appointment, and, in my opinion, have no right to fix any sum for his salary, or to say that he shall have any salary at all. The office seems one of rank only, giving the appointee merely precedence and authority over the remaining constables of the county. Two instances occur to me in which one body appoints, while the duty of paying the official devolves upon