event of differences arising between the parties as to such loss or damage claimed, and in the event of the defendants requiring an arbitration the matters in difference shall be referred. Now all the events, upon the occurring of which the parties have agreed that there shall be an arbitration, have occurred. Some effect surely should be given to this agreement, but there are only two ways in which effect can be given to it, namely, either by holding that the ascertainment of the amount of the loss or damage by arbitration is a condition precedent to any action being brought by the assured in respect of loss or damage claimed, or by holding that the defendants, the assurers, may apply to the court under the 167th section of the Common Law Procedure Act in the event of the assured, notwithstanding defendants request to refer the matter to arbitration, bringing an action to recover the loss or damage claimed; when the court may, upon being satisfied that no sufficient reason exists why the matters in difference should not be referred to arbitration, according to the agreement in that behalf, cause the agreement to be performed by staying all proceedings in the action. In order to give effect to the intention of the parties as appearing on the instrument, I think Mr. Dalton has rightly held that the 167th section of the Common Law Procedure Act does apply to this case.

Mr. Robinson further contended, that the matter in difference was a mere "valuation" and not a matter for arbitration; but I think there can be no doubt that the amount of the loss or damage if any sustained by the plaintiff, whether the mode of ascertainiug that amount be called a "valuation," or a "calculation," or "appraisement," or by any other name, is a proper subject for arbitration as much as it is a proper subject of an action. I am of opinion therefore that Mr. Dalton's order should be affirmed, or if desired, I will make an order in like terms, so as to avoid all objection, if any there can be, after consent of parties, as to Mr. Dalton's jurisdiction.

*Order accordingly.**

Molloy v. Shaw.

Setting aside arrest—Discretion of County Judge—Sufficiency of material—Entitling affidavits.

It is not a valid objection to an order to hold to bail that it was granted upon affidavits which were not entitled in any court; following *Ellerby* v. *Walton*, 2 Prac. Rep. 147.

A Judge of a Superior Court will not interfere where the County Court Judge has exercised his discretion.

[Chambers, July 12, 1870—*Richards, C.J.*]

On the 2nd of June the defendant was arrested upon a writ of *Capias ad respondendum* issued upon the fiat of the Judge of the County Court of the County of Wellington, and gave bail to the limits.

On the 12th of June *M. A. Dixon* obtained a summons calling on plaintiff to show cause why the order to hold to bail, the writ of *capias* issued thereon, the copy and service thereof, and the arrest of the defendant thereunder, should not be set aside with costs; or why the said writ of *capias*, and the copy and service thereof, and the arrest of the defendant thereunder, should not be set aside with costs; or why the arrest of the defendant should not be set aside with costs, and the bail bonds delivered up to be cancelled, on the following grounds,

1. That the affidavits to hold to bail were not nor was either of them entitled in any court;

2. That the affidavits did not show or allege a cause of action against defendant by the plaintiff sufficient to authorise the granting of an order to hold to bail;

3. That the affidavits did not show such facts and circumstances as would justify the granting of the order on the ground, that defendant was about to quit Canada, with intent, &c.;

4. That the defendant was not about to quit Canada with intent, &c.

McGregor shewed cause, and cited *Ellerby* v. *Walton*, 2 Prac. Rep. 147; *McGuffin* v. *Cline*, 3 C. L. J., N. S. 291.

Dixon, contra, cited *Allman* v. *Russell*, 9 U. C. L. J. 80; *Swift* v. *Jones*, 6 U. C. L. J. 63; *Terry* v. *Comstock*, 6 U. C. L. J. 235, and the Statutes and Practice.

Richards, C.J.—I do not feel warranted in setting aside the arrest on the ground that defendant was not about to quit Canada with intent, &c. The learned Judge of the County Court exercised his discretion in the matter, and on the material produced I cannot say he is wrong.

As to the defective entitling of the affidavits, *Ellerby* v. *Walton*, 2 Prac. Rep. 147, is express authority in favour of the plaintiff, and was decided in the full court. In the face of that decision I do not feel warranted in setting aside the arrest. I have less hesitation in arriving at this conclusion, as the amount for which he was held to bail is not large, and he says he is possessed of property, so that he will have no difficulty in procuring bail. As the last Chamber decision was in favor of the view now contended for by defendant, I shall discharge the summons without costs.

Summons discharged.

McMurray v. Grand Trunk Railway Co.

Short notice of trial "if necessary."

[Chambers, Oct. 15, 1870—*Mr. Dalton.*]

By the terms of an enlargement on a summons in Chambers, the defendants were to take "short notice of trial if necessary."

Mr Dalton.—I understand the words "short notice of trial if necessary" to have reference to the state of the cause and not to the convenience of the parties, even though that convenience may be as to their ability to procure evidence and prepare for trial.

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* In Michaelmas Term the plaintiffs moved the Court of Queen's Bench against this order, with what result we cannot yet say.—Eds. L. J.