noticed in a recent judgment of our Court of Error and Appeal—*Weir* v. *Mathieson* (3 E. & A. Rep. 123); see also *Regina* v. *Governors of Darlington School* (6 Q. B. 682).

It is also argued that in the last Registry Act, as in the former, it is provided that every Registrar in office when the act took effect is thereby "continued therein, subject to the laws in force respecting public officers, and to the provisions and requirements of this act." This, I think, cannot have the very serious effect of turning an office, which I think the Legislature meant to be held during good behaviour, into one during pleasure, which would certainly be its effects so far as the County of Bruce is concerned.

Nor can I think that the Interpretation Act helps the defendant. That could have been only designed to supply the omission of formal words giving the power of removal, not to introduce a new power of removal at discretion in cases in which the Legislature have provided for removal for specified causes and in a specified manner.

If a particular tenure be created of an office, and a person be appointed to that office with all its rights and privileges, I do not see that the insertion of the words "during our Royal pleasure," can legally limit or narrow the statuable rights of the appointee, whatsoever those rights may be.

The facts of the case before us may, perhaps, induce an opinion that it might be as well for the interests of the public that the office should be held on no higher tenure than that of a Sheriff, and most other appointments under the Crown. This at least might be thought, so long as the duties of a Returning Officer at a contested election might be cast upon the person holding the office of Registrar.

MORRISON, J. concurred.

Rule discharged

COMMON LAW CHAMBER.

(*Reported by* HENRY O'BRIEN, *Esq., Barrister-at-Law and Reporter in Practice Court and Chambers.*)

CHICHESTER v. GORDON, LACOURSE AND GALLON.

Setting off judgments—26 Vic., cap. 45, secs. 2, 3.

Held, that under 26 Vic., cap. 45, secs. 2, 3, the absence of a formal assignment will not prevent a surety from enforcing a remedy which he would have if the assignment had been executed.

A judgment was recovered by B. U. C. v. A. Chichester, C. Chichester, and Lacourse, also a judgment of A. Chichester v. Gordon, Lacourse, and Gallon. An application by Lacourse, who had paid the former to set it off against the latter was granted.

[Chambers, March, 23, 1867.]

In 1863 the defendant Lacourse, as attorney for Gordon, obtained judgment in the County Court of Peterborough and Victoria, against the above plaintiff, Arthur Chichester. The plaintiff, subsequently after an examination of the defendant, obtained an order for his committal for unsatisfactory answers, unless he should give a note endorsed by his sister Charlotte Chichester for the amount of the judgment. This note was eventually given, after the order had been partially enforced, under duress, as it was said, of such order. The note was given to Lacourse, who endorsed it over to the Bank of Upper Canada, who, in 1865, recovered upon it a judgment in the County Court of Victoria, against Arthur Chichester, Charlotte Chichester, and Lacourse, for about $170 which was paid by Lacourse.

Arthur Chichester brought this action against the present defendants (Gallon being Deputy Sheriff at the time) for an illegal arrest under the conditional order, and recovered a verdict for $200. A certificate for full costs was refused.

A summons was thereupon obtained by Lacourse to shew cause why the judgment of the Bank of Upper Canada, or so much thereof as might be necessary, should not be set off against so much of the judgment in this cause as should remain after the said Lacourse should have satisfied the lien of the attorney of the plaintiff, upon the judgment herein for his costs, as between attorney and client, &c.

C. W. Patterson shewed cause, and contended that the judgment of the Bank could not under the circumstances be set off, and that in this case the fact was, that the plaintiff's interest in the judgment in this case had been assigned to one Platt, and he filed the plaintiff's affidavit and the examination of Platt in support of the statement.

C. S. Patterson, contra, referred to 26 Vic., cap. 45, secs. 2, 3; Ch. Arch. Pr., pp. 723, 724, (12 ed.): *Edmonds* v. *S—B—*, 3 F. & F. 962; *Alliance Bank* v. *Holford*, 16 C. B. N. S. 460.

RICHARDS, C. J.—The application being made to the equitable jurisdiction of the Court, we must look at the real position of the parties, and dispose of their rights in relation to that. Under the 26 Vic., cap. 45, secs. 2, 3, the defendant Lacourse would seem to be entitled to enforce the remedies against Chichester which the Bank had. The mere absence of a formal assignment does not seem to be a good reason to interpose to prevent the surety from enforcing his remedy, which he would have if the assignment had taken place. The case of *Edmonds* v. *S—B—*, 3 F. & F. 962, seems to sustain this view.

The general doctrine is laid down in Chitty Archbold, at page 724, (12 ed.) The judgments to be set off must be between parties substantially the same, though it is not necessary that they should be exactly the same parties, as in the case of a set-off under the statute of set-off, provided the funds to be ultimately resorted to in both actions be substantially the same. In the judgment of the Bank of Upper Canada, Chichester is the party who is the maker of the note sued on in that action, and the one whose funds should pay that debt. He is the person who is the plaintiff in the action in which the application is made, and unless his interest in the claim has been assigned he is the person to receive the funds that will go to pay the demand in this action so that there is in that respect an identical interest in the two suits.

The defendant, Lacourse, under the statute, is the person clearly entitled to receive the proceeds of the judgment in favor of the Bank of Upper Canada as his own funds. He is also liable as a defendant to pay out of his own funds the amount of the plaintiff's judgment in this cause, and I think the interest he has in the two suits is sufficient to warrant the application of the principle of set-off in relation to them. In the cases referred to in the same edition of Chitty's Archbold, at page 723-4, the case of *Alliance Bank* v. *Holford*, 16 C. B. N. S. 450 to which I have been referred,