having directed the jury, among other things—1. That White was the owner of the rent, and entitled to receive and distrain for it; 2. That McLean was not entitled to distrain for it; and 3. That there could be no distress, if a note were taken for the rent,—for in no respect did I charge the jury in this manner.

I did not say White was the owner of the rent, or entitled to distrain for it. I gave no direct opinion upon it, although I had then, and for long before then, entertained the opinion that the assignee of rent, the owner of a rent-seck, could distrain for it in his own name; for so I read the statute of George the Second and the comments of the writers upon it. But I knew this view was not considered as perfectly free from doubt, and therefore, I refrained from positively committing myself.

But what I did say at the trial shewed what my opinion was, for I suggested that the allegation in the declaration, that the rent was payable to White, was not proved, but the contrary, for it was payable to McLean; and I requested the jury to say whether the plaintiff had or had not notice of the assignment of the rent to McLean; all of which would have been quite unmeaning if the rent were still White's or if McLean could not in any case distrain for it.

But I did tell the jury that, for the mere purpose of the trial, they might assume the rent did belong to White, because the question was afterwards to be considered by the court.

Nor did I say there could be no distress if a note were taken. Such a thing did not occur at the trial as all. The effect of giving a note is to suspend the remedy by distress during the currency of the note; but this has notning to do with the facts of this case, for the note given was due before the distress. I expressed no opinion whether a note could be considered payment under the statute of Anne. I have now sugge ted this for future consideration.

If I had observed the terms of the motion I would not have assented to the rule in its present form

I think on the merits there should be a new trial, costs to abide the event

Rule absolute for new trial, costs to abide the event.

PRACTICE COURT.

(*Reported by* Henry O'Brien, Esq., *Barrister-at-Law.*)

ON APPEAL FROM THE COUNTY COURT OF THE UNITED COUNTIES OF STORMONT, DUNDAS, AND GLENGARRY.

Alexander McLellan v. John McClellan.

Appeal from County Court—Motion to strike out—Sufficiency of bond.

Where the appeal bond allowed by the county judge is for a sum less than the verdict—*Held*, insufficient; but this court will not go behind the certificate of the county judge to enquire into the regularity of the prior proceedings, but will assume that every thing has been rightly done in the court below. *Pentland* v. *Heath*, 24 U. C. R. referred to.

[P. C., E. T., 1866.]

Kerr obtained a rule in Easter Term last, calling upon the appellant to show cause why this appeal should not be dismissed with costs, or be struck out from the paper or list of causes with costs, on the following grounds:—

1. The appellant has not given such security, and has not filed or produced, or left with the judge or clerk of the County Court appealed from, such a bond as by the statute in that behalf required, or any sufficient bond or security; and that the bond filed by the said appellant as such security, is not conditioned to pay the verdict which had been obtained against him.

2. The bond is only a security for $120, being only part of the verdict, and is insufficient, and does not comply with the statute

3. The sureties have not justified as bail are required to justify, although required so to do by the statute.

4 The affidavit of the sureties is not entitled in any court nor in any cause.

5. The sureties have not shown that they are resident housekeepers or freeholders.

6. They have not sworn they are worth property to the amount of the penalty of the bond, or justified to that amount over and above what will pay their just debts.

7. They have not sworn that they are not sureties or bail for any other persons, and on other grounds.

S. Richards, Q C., showed cause.

The judge of the County Court is by statute the person who has power to fix the amount for which security shall be given, and his decision is final; and he may direct the bond to be given for a sum less than the verdict, and costs, if he see fit

There is some difficulty as to the proper mode of intituling the affidavit of justification. The same strictness should not be required in such an affidavit when in a cause pending in the court, as if the rules of that court make special provision for the formalities to be observed.

The allegations by the sureties that they are worth so much, "all my debts being first paid," is just the same as "over and above all my debts."

These exceptions cannot now be revised here, because the judge's allowance of the bond has cured them all and is conclusive here. If there be anything defective or irregular, the application should be made to the court below to set aside the allowance of the bond.

If any of these objections are entitled to prevail, this appellant should be allowed to substitute another bond.

Kerr supported his rule, and contended that—

1. The statute describes the bond which must be given, and one of the requirements of the statute is, that it shall be conditioned to abide by the decision of the court appealed to, and to pay all sums of money and costs, &c. The county judge has power to name in what sum the bond shall be *over and above* a sum sufficient to secure the sums of money, &c.; but no power to name a sum less than the amount to be secured. He has a statutory power, and must see the statute complied with. 22 Vic., cap. 15, sec. 68. The court requires a strict compliance with the act. *Re Kernahan* and *Preston*, 21 U. C. Q. B. 461.

2. Sureties have not justified, as bail are required to justify. Affidavits must be entitled in the Court in which they are used. Arch. Prac. 1600-7; Rule of Court, No. 81, Trinity Term, 1856; *In re Lord Cardross*, 6 M. & W. 544; *Osborne* v. *Tatum*, 1 B. & P. 271; *Wigden* v *Burt*,