required by sub-sec. 6 of sec 246 of the Municipal Institutions Act; and that the by-law does not limit the number of licenses to be issued.

DRAPER, C. J.—We think the long delay between the time of the passing of this by-law, which took effect on the 1st of March, 1863, and the time of this application, affords a sufficient reason for our not exercising the summary jurisdiction conferred by the 195th section of the act.

If the by-law is void for the reasons offered, or for any other reasons, our not interfering will not either prevent persons injured by its enforcement from obtaining redress, nor will it sustain proceedings which would be unauthorized if it were not for its assumed legality. On the other hand, after so long a delay and apparent acquiescence in its provisions, we do not see reason to apprehend any great evil from our not discussing the questions raised in a summary manner. Probably after this notification the council of the corporation will satisfy themselves whether there is any omission in passing it, or any other defect in it fatal to its validity, and if so, annul it before any new difficulty arises. We refuse the rule.

Rule refused.

MALCOLM MCPHATTER AND ALEXANDER MCPHATTER v. LESLIE AND INGRAM.

Sale of goods—Estoppel—Notice of action under Division Courts Act.

In an action for seizing goods under Division Court attachments, it was proved that a few days before the seizure the goods had been sold by auction under the direction of one of the plaintiffs, who executed a bill of sale to the vendee, witnessed by the auctioneer. *Held*, that this plaintiff could not afterwards be permitted to set up that the sale was void because fraudulent as against the plaintiffs' creditors, and to maintain trespass for seizing the same goods as if they were his own

Semble, that notice of action to a Division Court clerk is sufficient if it complies with C. S. U. C. ch. 19, ss. 193, 194, though it may not contain all that is required by ch. 126, for the latter act does not overrule or vary the former, but they establish rules for distinct cases.

Trespass *de bonis asportatis*, on the 23rd of October, 1863. *Second count*, laying the same trespass on the 24th of October. *Third count*, trover for the same goods, laid on the 28th of October.

Each defendant, by the same attorney, pleaded not guilty, by statutes 22 Vic., ch. 19, sec. 194, and 22 Vic., ch. 126, sec. 11, both public acts, Consol. Stats. U. C.

The case was tried in Guelph, in March, 1864, before John Wilson, J.

The plaintiff proved service of notice of action on the defendant Leslie, clerk of the Second Division Court of the county of Wellington, on the 16th of November, 1863, and on the defendant Ingram, a bailiff of the same court, on the 17th of November, 1863. A copy of the warrant under which Ingram acted was also demanded.

Ingram was called by the plaintiffs. He proved that he seized the goods mentioned in the declaration on the 23rd of October, 1863, advertised them on the 24th, and sold them on the 28th. He produced twelve warrants of attachment signed by the defendant Leslie, as clerk of the Division Court, addressed to him (Ingram) as bailiff, commanding him to seize, &c, the personal estate and effects of the plaintiffs. He said he also had two executions against the same goods signed by Leslie, which he produced.

He sold on the attachments, and took the goods away on the 23rd of October, and returned the proceeds to Leslie. The amount of attachments was about $229. He put in a list of the things sold, and evidence of their value was given.

On cross-examination of Neil McPhatter, one of the plaintiffs' witnesses, he said that the plaintiff Alexander had told him they (the plaintiffs) had sold a few things to Neil McPhatter (not the witness) that creditors whom the plaintiff Alexander named had threatened them, and they assigned some things to Neil to prevent it. This Neil, the witness, was plaintiff's hired man, and did not pretend to own the property. The other Neil was a cousin of the plaintiffs, and swore the property was theirs; that he had bought it to give them time to sell it, and he set up no claim to it at the sale. The sale to him was two or three days before the bailiff seized. He told one of the creditors the property was his, but he issued an attachment and gave it to the bailiff for his claim for wages.

A nonsuit was moved for, on the ground that defendant Leslie was entitled to the protection of ch. 126, Consol. Stat. U. C. The learned judge held that the action failedas against the bailiff, but overruled the objection as to Leslie, with leave to move.

On the defence were put in a number of warrants of attachment against the plaintiffs, and the affidavits upon which the defendant Leslie granted them. All these affidavits stated that the deponent was a creditor (stating for what sum) of the plaintiffs: that deponent had good reason to believe, and verily did believe, that the two plaintiffs in this suit were about to abscond from the province, or to leave the county of Wellington, with intent and design to defraud the deponent, taking away personal estate liable to seizure under execution for debt. It was also proved that there were numerous judgments recovered against the plaintiffs, on some of which there were executions in the sheriff's hands.

It was further proved that a sale by auction was made on the 20th of October, 1863, of the goods afterwards seized by the bailiff, and that Neil McPhatter was the purchaser. A bill of sale of that date was drawn up, in which the vendor was stated to be the plaintiff Alexander, and he signed a receipt for payment of the price, $337, in full, at the foot of the bill of sale, to which the auctioneer was a subscribing witness. On the same day an agreement by way of lease was executed, between Neil McPhatter and the plaintiff Alexander, whereby Neil agreed to lease the same property to Alexander, for one year, for the sum of $137, provided that if Alexander paid Neil $137, with interest, before the 20th of October, 1864, the property was to belong to Alexander, and if not it was to remain the property of Neil, and "this lease shall become null and void."

The auctioneer stated that Alexander and Neil came to him to sell the property, which he did, and Neil became the purchaser. Neil and a woman were bidders. Five or six persons were at the sale. Something was said about cloaking the property. Alexander said that they owed Neil $200, and were to allow him this on the sale, and were to give credit for the $137. The auctioneer put up a notice three or four days in Graham's bar-room, in Galt. He understood they did not want the sale made public in Clyde; it was however advertised in three or four places. Alexander said the sale was made to secure Neil, and to raise money to pay one Atwood, who had an execution. Atwood was at the sale. He swore that he supposed it was on his execution, and got paid in money and its equivalent.

Neil McPhatter was re-called by the defendants, and swore the plaintiffs did owe him $17: that there were people at the sale: that he and Alexander bid one against another: that the plaintiff Malcolm knew nothing of all this: that all the things were delivered to him, and he took none away.

The learned judge directed a verdict in favour of the bailiff, and said the affidavits did not authorise the issue of the warrants of attachment; and that, so far as the plaintiffs were wronged by the seizure and sale on the attachments, the defendant Leslie was liable, but not for any goods sold on Atwood's execution, which was for $88 55, and on which, according to the endorsement thereon, a seizure was made on the 5th of October, 1863, by Ingram, and a considerable part of the property sold on the 28th of October was taken in execution. Atwood had a second execution for the same amount, and issued on the same day, on which also the same property was seized, according to Ingram's endorsement, on the 3rd of October. He also directed that if any of the goods, after satisfying these executions, were sold by the plaintiffs to Neil McPhatter, although fraudulently, the plaintiffs could not recover for them, for the sale would bind them, though void as against creditors; and if the jury found that any goods were seized under the attachments which had neither been sold under the executions nor yet to Neil McPhatter, the plaintiffs were entitled to recover for those goods at all events.

The defendants' counsel objected, 1. That whatever had been paid to creditors who had issued attachments should be allowed to Leslie in mitigation of damages. The learned judge declined so to direct. 2 That the jury should have been directed that if Alexander alone sold the goods to Neil, he could not join in this action, though Malcolm could sue alone: and that Leslie was not responsible for any sale made by Ingram; and that the learned