lants were entitled to damages which were assessed at $100.

Beigue and *Geoffrion*, for the appellants.

Pagnuelo, Q.C., and *Cruickshank*, for the respondents.

From New Brunswick.]

MCSORLEY V. MAYOR OF ST. JOHN AND LANDALL.

Action of arrest by virtue of an execution issued for assesment under 41 Vict., ch. 9—Plaintiff did not own lands on account of which the assessment was made—Execution issued by Receiver of Taxes for City of St. John—Liability of receiver and corporation.

The 41 Vict., ch. 9, intituled "An Act to widen and extend certain public streets in the City of St. John," authorized commissioners appointed by the Governor-in-Council to assess the owners of the land who would be benefitted by the widening of the streets, and in their report on the extension and widening of Canterbury street the commissioners so appointed assessed the benefit to a certain lot at $419.46, and put in their report the name of the appellant, McS., as the owner. The amount so assessed was to be paid to the corporation of the city, if not, it was the duty of the Receiver of Taxes appointed by the city to issue execution and levy the same. Appellant, although assessed, was not the owner of the land. After notice to pay, S., the Receiver of Taxes, on default issued an execution, and for want of goods the appellant was arrested and imprisoned until he paid the amount at the Chamberlain's office in the City of St. John. The action was for false imprisonment, and for money had and received. The jury found a verdict for appellant on the first count against both defendants.

Held, (reversing the judgment of the Supreme Court of New Brunswick), That the writ of execution having been executed by S., a servant of the corporation under their control, without any legal authority to justify its issue, and the corporation having adopted the act of their officer as their own by receiving and retaining the money paid, and authorizing McS.'s discharge from custody only after such payment, the verdict in favour of the appellant for $635.36, against both respondents on the first count should stand.

Weldon, Q.C., for appellant.

Dr. Tuck, Q.C., for respondents.

From Nova Scotia.]

CONFEDERATION LIFE ASSURANCE CO. V. O'DONNELL.

Policy, delivery of—Policy not counter-signed, effect of—Premium—Proof of payment of—Delivery of policy insufficient—Escrow.

On an action on a policy the appellant's company claimed that the policy was never delivered, and that the premium had never been paid, and that it was not a perfected contract between the parties. The policy was sent from Toronto to Halifax, to the agent at Halifax, to receive the premium and countersign the policy, and deliver it to the party entitled. The agent never countersigned the policy, and on one side of the policy the following memo. was printed:—"This policy is not valid unless countersigned by——agent at——, countersigned this——day of——, ——agent." The agent, in his evidence, said he delivered the policy to W. O'D., the party assuring, not countersigned in order that he might read the conditions, and swore the premium had not been paid. The policy was found among W. O'D.'s papers after his death not countersigned. The policy was dated 1st October, 1872, and the first premium would have covered up the year to the 1st October, 1874. W. O'D. died the 10th July, 1873. The case was tried before McDonald, J., with a jury, and he gave judgment in favour of respondent for the $3,000, and this judgment was confirmed by the Supreme Court of Nova Scotia. On appeal to the Supreme Court of Canada it was held as follows:—

Held, (FOURNIER and HENRY, J.J., dissenting), that the evidence established the fact that the policy had not been delivered to the assured as a completed instrument, and therefore appeal should be allowed.

Per GWYNNE, J.:—That the instrument was delivered as an *escrow* to the agent, not to be delivered as a binding policy to W. O'D. until the premium should be paid, and until the agent should, in testimony thereof, countersign the policy, and that their was no suffieient evidence to divest the instrument of its original character of an *escrow*, and to hold the defendants were bound by the instrument as one completely executed and delivered as their deed.

Beatty, Q.C., and *Lees*, Q.C., for appellants.

Thompson, Q.C., for respondent.