for that court to say whether a writ of restitution should go, and they declined so to order.

It was contended for the private prosecutor that this court is now bound to order the issue of a writ of restitution. No authority was cited shewing clearly that such is the law. *Rex* v. *Williams*, 9 B. & C. 555, also reported in 4 M. & R. 471, was relied on as an authority. What Bayley, J, says is, "When it is considered that a *certiorari* only substitutes this court for the court below, whatever ought to have been done there, had the case remained there, it must be the duty of the court here to do when the case is removed." The point was not strongly pressed in that case, nor did the decision directly involve the question whether the court was bound to order the writ.

In the case in our own court, *Rex* v. *Jackson et al.*, Dra. Rep. 53, a case in some of its circumstances analogous to this, and also removed by *certeiorari*, the court declined to grant the order for restitution.

We do not think that this is a case in which we should interfere, and the rule is therefore discharged without costs.

Rule discharged.

COMMON LAW CHAMBERS.

(Reported by HENRY O'BRIEN, ESQ., *Barrister-at-Law.)*

THE QUEEN v. MURDOCH MCLEOD

Change of venue in criminal cases—32, 33 Vic., cap. 29 sec. 11.

Held, that 32, 33 Vic., cap. 29, sec. 11, does not authorize any order for the change of the place of trial of a prisoner, in any case where such change would not have been granted under the former practice, the statute only affecting *procedure*.

[Chambers, Jan. 5, 1870.]

The prisoner in this case was under recognizance to appear at the next Assizes, at Kingston, in the county of Frontenac, to answer a charge of manslaughter.

W. Mortimer Clark, on behalf of the prisoner, applied under the provisions of 32, 33 Vic., cap. 29, sec. 11, entitled "An Act respecting procedure in criminal cases, and other matters relating to criminal law," for an order to change the venue from the county of Frontenac, to the county of York, upon an affidavit in which the prisoner stated that he was informed and believed that all the witnesses intended to be examined on behalf of Her Majesty at his trial, resided at the City of Toronto: that any witnesses to be examined on his own behalf at his trial, resided at or near the City of Toronto, and that he was unable to pay the expense of the attendance of witnesses on his behalf, and the counsel he desired to retain at his trial, if it should take place at the City of Kingston.

Leith, shewed cause for the Attorney-General. It would be a bad precedent to allow a change of venue on the grounds disclosed. The Act gives no jurisdiction to a judge to change the venue on these facts and the mere poverty of the prisoner is no sufficient reason.

The statute is not intended to give any new ground for changing the venue, but merely to simplify procedure, and to prevent the necessity of proceeding under the old and inconvenient practice of removing the case into the Queen's Bench by certiorari, and then moving to change the venue. The affidavit at all events is insufficient, as it does not shew the particulars as to witnesses, &c., required by the practice on applications to change the venue.

Clark, contra.

It is a mere matter of discretion with the judge, and owing to the poverty of the prisoner "it is expedient to the ends of justice" that the place of trial should be changed.

GALT, J.—Section 11, is as follows: "Whenever it appears to the satisfaction of the court or judge hereinafter mentioned, that it is expedient to the ends of justice, that the trial of any person charged with felony or misdemeanor should be held in some district, county, or place, other than that in which the offence is supposed to have been committed, or would otherwise be triable, the court at which such person is, or is liable to be indicted, may at any term or sitting thereof, and any judge who might hold or sit in such court, may at any other time order, either before or after the presentation of a bill of indictment, that the trial shall be proceed with in some other district, county, or place within the same Province, to be named by the court or judge in such order; but such order shall be made upon such conditions as to the payment of any additional expense thereof caused to the accused, as the court or judge may think proper to prescribe." In the affidavit there is no allegation that the accused is apprehensive that a fair trial cannot be had in the county of Frontenac, as was the case in *The King* v. *Holdew*, 5 B. & Ad. 347, and *The Queen* v. *Palmer*, 5 El. & Bl. 36 In the former case the application was refused, but it was granted in the latter on the consent of the Attorney-General.

It appears to me that the contention of Mr. Leith in this case is the correct view of the intention of the Legislature, namely, to substitute proceedings like the present for the old practice of removing the case by certorari into the Queen's Bench, and then moving to change the venue, and that an order such as prayed for, should be made, only in cases when under the former practice, a change of venue would have been granted; in other words, "when it is expedient for the ends of justice that the trial should be held in some other place than that in which the offence is supposed to have been committed." It is quite clear that no such change would have been made in this case, and therefore the present summons should be discharged. There is no saying to what inconvenience the granting of applications like the present might not lead.

Summons discharged.

CURIOUS TENURE.—Blechesdon, County of Oxford.—Anno. 1339, 13th and 14th Edward III. An inquisition was taken on the death of Joan, widow of Thomas de Musgrave, of Blechesdon, wherein it appears that the said Joan held the moiety of one messuage and one carrucate (carcucate of land, as much as a plow can plow in a year) of land in Blechesdon, of the King, by the service of carrying one shield brawn, price two pence, to the King, whenever he should hunt in the park at Cornbury, and do the same as often as the King should so hunt, during his stay at his manor of Wolestoke.—*Oxford Journal.*