tors whose trustee he is made, and to express an intent of divesting such trustee of all such authority and to prescribe to him a rigid unalterable course, which, in the discharge of his trust, he must pursue against the dictates of his own judgment, and against the will of the creditors whose trustee he is made, are one and the same thing. There are other parts of the reasoning upon which this judgment is rested which seem to me to lead to the conclusion that delaying a creditor in obtaining satisfaction of his debt by the particular process of execution in a suit at law is equally a defeating and delaying of him within the prohibition of the statute as the vesting the trustee with authority in his discretion to sell upon credit, if such would be a reasonable and proper course to pursue in the interest of the creditors, and that the former is not within the prohibition of the statute is established in our courts beyond all controversy.

Upon the whole, therefore, after a careful perusal of both judgments, I must say that that of the Superior Court is, in my opinion, based upon much sounder reasoning, and is more reconcilable with the English authorities than is that of the Court of Appeals, and I think it to be a sound rule to lay down as governing all cases like the present, that an assignment of property by an insolvent debtor can never be declared void under the statute in question here, if in the opinion of the tribunal for determining matters of fact in each case, the actual intent of the debtor, as a matter of fact, in executing the deed was, as the jury must be taken to have found that fact in this case, to provide for the payment and satisfaction of the creditors of the debtor rateably and proportionably without preference or priority according to the amount of their respective claims; and, in my opinion, the mere fact that the deed contains a clause authorizing the trustee in his discretion to sell the property assigned, or any part of it, on credit, if such a mode of selling it should seem reasonable and proper and in the interest of the creditors, does not justify as a conclusion of law an adjudication that the grantor's intent in executing the deed was not to provide for such payment, but on the contrary, in violation of the provisions of the statute in that behalf, was to defeat and delay his creditors.

COUNTY COURT OF THE COUNTY OF YORK.

COLLINS v. BALLARD.

Poundkeepers' Act—R. S. O. Cap. 195—Construction of—Replevin.

Where A. impounded B.'s horse under section 8, R. S. O., cap. 195, and gave usual statutory notices, but notice under section 8 was given a few hours late. *Held*, that the section was directory only, and a substantial compliance was sufficient.

Semble, Replevin will only lie (1) for improper or unlawful impounding; (2) where extortionate claim made and no tender of reasonable or proper amount, or (3) where there has been some improper dealing wtih animal distrained.

[Toronto, June 24.—Co. Ct. Term.

The facts sufficiently appear in judgment of

McDOUGALL, J. J.—This is an action of replevin brought to recover a horse belonging to the plaintiff, alleged to be wrongfully detained by the defendant.

The horse, it appears, got astray and came into the defendant's premises on the 23rd September, 1883. The defendant lives in the Township of Whitchurch, and a by-law of the township was proved by which it was declared illegal for animals to run at large upon the highways in the township. The defendant, instead of sending the animal to the pound, gave a notice under R. S. O. cap. 195, sec. 8, and also advertised the animal for over three weeks in the Newmarket *Era*, a paper published in the municipality (sec. 10). Before the expiration of two months (sec. 12), the owner (the plaintiff), discovered the whereabouts of his horse, and came to the defendant's place and demanded the possession of his animal. The defendant expressed his willingness to give up the horse upon being paid his charges for its keep, which he claimed at the rate of 40 cents a day. This amount it was proved was the per diem allowance that poundkeepers in the municipality were by by-law permitted to charge. The plaintiff thought the charge excessive or improper, and declined to pay it. He did not offer to pay any sum whatever, and left the defendant's place without getting his horse. Shortly afterwards—the two months having expired (sec. 12), the defendant caused to be posted up the sale notices under sec. 13, and mailed a copy of such notice to the plaintiff. Before the day named for the sale the plaintiff replevied the animal, and this action is trying his right to recover possession of his horse. At the trial, with the consent of the parties, I struck out the jury notice and tried the case myself, and at the conclusion of the evidence reserved my judgment.

The defendant for his defence, besides the general issues, sets up a lien and claims the right to