stream, or in the mill-pond, which according to one witness includes the bed of the stream, is an inlury to the right, even though the plaintiff had lost nothing in the working of his mill. In *Nicklin* v. *Williams*, 10 Ex. 259, during the argument, Parke, B. says, (p. 267): "Whenever an act done would be evidence against the existence of a right, that is sn injury to the righi, and the party injured may bring an action in respect of it." And although *Nicklin* v. *Williams* was not upheld (see *Bonomi* v. *Backhouse*, in appeal, E. B. & E. 646, and *Backhouse* v. *Bonomi*, in error, 7 Jur. N. S. 800, in Dom. Proc., yet the principle above stated is neither shaken nor questioned.

It appears to us therefore there must be a new trial, with costs to abide the event.

Rule absolute.

PRACTICE COURT.

(Reported by HENRY O'BRIEN, ESQ., *Barrister-at-Law, Reporter in Practice Court and Chambers.)*

ADSHEAD v. GRANT.

29, 30 *Vic. cap.* 53, *sec* 98—*Seizure under fi. fa. goods—Claim by Collector for taxes—Priority.*

A sheriff returned to a *ven. ex.* and *fi. fa.* residue against goods, that he had made $50, out of which he had paid a collector of taxes $48 39, claimed for taxes due by defendant at the time of the seizure under the writ, on land upon which the goods were, and of which the sheriff had notice prior to the sale, and that he had retained balance towards his fees, &c. No distress had been made by the collector.

Held, that the sheriff must, nevertheless, account to the execution creditor for the $50, because a distress by the collector is a necessary antecedent to obtaining the benefit of the statute.

[P. C., E. T., 1867.]

E. Martin, last term, obtained a rule on the sheriff of the United Counties of Prescott and Russell, to show cause why his return to the writ of *venditioni exponas* for part, and *alias fieri facias* for residue, should not be quashed, because it contradicted the return made by him to the previous writ of *fieri facias* against goods, and contradicts also the said writ of *venditioni exponas* and *fieri facias* for residue, and because the return complained of was vague and uncertain, and did not show under what writ the goods were seized and sold, or what goods were sold; and why he should not make a proper return; or why he should not pay the plaintiff, or bring into court the sum of fifty dollars mentioned in the return, or so much thereof as should remain after deducting his fees, but without deducting the taxes mentioned in the return; or why, if the taxes should properly be deducted, he should not pay to the plaintiff or bring into court the balance, after payment of the taxes and sheriff's fees, and amend the return made by him as aforesaid according to the facts; and why he should not pay the costs of this application.

The return to the original *fi. fa.* against goods was, "Goods on hand to the value of $20, and *nulla bona* as to the residue;" and the return to the second writ was, "I have caused to be made of the goods $50, out of which I have paid to the collector of taxes for the municipality of Longueuil, in which the said goods and chattels were at the time of the seizure and sale thereof by me, the sum of $48 39, claimed by him for taxes of the lands and premises whereon the said goods were taken in execution, and of which I had notice from him prior to the sale—due by the defendant to the municipality at the time of the seizure—and I have retained the sum of $1 60, the residue thereof, towards my own fees; and that the defendant has no other goods, &c., whereof, &c."

H. Cameron, during this Term, showed cause. He filed the affidavit of the sheriff, which stated the delivery of the original *fi. fa.* to him on or about the 27th November, 1866, endorsed to levy $1,926 34 for debt, and $63 50 for costs, besides interest, sheriff's fees, &c.; a seizure made of certain goods, and a return of the same being on hand to the value of $20; the delivery of the *ven. ex.* and *fi. fa.* for residue to him on the 17th December, under which he sold the goods so seized for $50; the seizure of the goods on land of the defendant in the town of L'Orignal; the notice by the collector of the township of Longueuil to the sheriff, that the taxes for the past year, charged on the land, amounting to $48 39, were due, and that he required payment of the same to be made or secured to him out of the proceeds of the goods before the removal of the same from the land; the giving of the undertaking by the sheriff to pay the taxes, and the sale of the goods for $50; and his belief that this amount was rightly paid by him for taxes, and that his return is correct; and the conclusion was, "And I am advised and believe that the right of the collector [of the township] to be paid the said taxes arises under the English statute 43 Geo. III. cap. 99, sec. 37, and the Canadian statute 29 & 30 Vic. cap. 53, sec. 98, the said defendant being a non-resident owner of lands."

Martin supported the rule. What the collector did was not a seizure by him: Arch. Pr. 2 edn. 619; *Nash* v. *Dickenson*, L. R. 2 C. P. 252, and the collector could not take goods in the custody of the law.

ADAM WILSON, J.—The affidavit is very obscurely worded. It is stated that the lands on which the goods were seized by the sheriff is situate in the town of L'Orignal, and again that it is situate in the township of Longueuil; and that the defendant does not reside on the land, but two or three miles distant from it; and from this it is desired, in connection with the last paragraph of the affidavit, that it should be assumed the defendant was a non-resident owner of the land, and, as such non-resident he had required his name to be entered on the roll, under the 29 & 30 Vic. cap. 53, sec. 98, or the prior act of the Consolidated Statutes for Upper Canada, cap. 55, sec. 97; and that (assuming the roll to have been given to the collector) the collector had duly made a demand on the defendant for payment of the taxes, so as to be entitled to distrain.

I cannot take all this for granted. But even if it were true, I am not of opinion that the collector has the right to forbid the removal of the goods by the sheriff, who acts under an execution. The statute enables the collector to "make distress of any goods and chattels which he may find upon the land;" and *if he make distress*, then "no claim of property, lien or privilege shall be available to prevent the sale, or the payment of the taxes and costs out of the proceeds thereof;" under which latter words it is very probable the distress by the collector would supersede, to the extent of the taxes, the prior seizure of the sheriff