

to adjudicate upon claims for rent, might involve the question of title, for two might claim for rent adversely to each other. The clause quoted, which stays proceedings in any court for the alleged wrong in seizing, implies the right in the judge to adjudicate upon rights to property and securities exceeding in value one hundred dollars, and contains no provision to prevent the judge from proceeding in case the inquiry involves the title to lands.

We, therefore, think the judge may, in interpleader, try whose the crops are, although the inquiry may bring the title to the land in question.

In regard to the question as to whether the judge alone is to adjudicate upon the claim in interpleader, or may summon a jury, or whether either party may summon a jury, we think the directions of the statute are plain: "The county judge having jurisdiction in such division court shall adjudicate upon the claim."

A new trial has been granted by the Division Court judge. We cannot presume he will act contrary to the express directions of the statute, and throw off the responsibility cast upon himself. But can we grant a prohibition on the statement that he has once improperly sworn a jury, and on the suggestion that he may do so again? We think not; and no doubt the opinion of the court in this respect will prevent the irregularity in future. The rule will be discharged.

Rule discharged without costs.

### RECORDER'S COURT.

(Before the Recorder of the City of Toronto)

#### IN THE MATTER OF BENNET G. BURLEY.

*Ashburton treaty—Fugitive felons—British subjects—Belligerent rights—Robbery.*

**Held, 1.** That the Ashburton Treaty as to the extradition of fugitive felons, and our acts passed to give effect to it, extend to British subjects committing the offences named in the treaty, in the territory of the United States, and becoming fugitives to Canada.

**Held, 2.** That it is in the discretion of the magistrate investigating into a charge under the treaty against a person accused of one of the crimes mentioned in the treaty, to receive evidence for the defence.

**Held, 3.** That under the circumstances of the case as shewn, as well on the part of the prosecution as the defence, that the accused, who took the property of a noncombatant citizen by violence from his person, was guilty of robbery and liable to be surrendered under the treaty.

(Toronto, January 20, 1865.)

The prisoner, Bennet G. Burley, was charged with a robbery from the person of Walter O. Ashley, of a \$20 treasury note of the United States, in use in the said States as current lawful money thereof.

The robbery was charged to have been committed in the State of Ohio, one of the United States of America, on the nineteenth day of September, 1864.

The charge was preferred, before the Recorder of Toronto, against the prisoner, under the laws in force in this province respecting the treaty between her Majesty and the United States for the apprehension and extradition, amongst others, of persons charged with the commission of the crime of robbery within the jurisdiction of the said United States.

From the evidence for the prosecution, it appeared that at the time of the committing of the

acts complained of, viz., the 19th September, 1864, and for some time previous, civil war existed between the Confederate States of America and the United States of America. Johnson's Island is in Sandusky Bay, two miles from the city of Sandusky, in the State of Ohio, one of the United States of America, and is a military post of the government of the United States, having a military prison, reported and understood to contain between two and three thousand Confederate prisoners of war, and having the United States war vessel *Michigan* guarding the same. Ashley, the complainant, was a resident of the city of Detroit, in the State of Michigan, and a citizen of the United States, and owner jointly with other citizens of the United States of an American steamer called the *Philo Parsons*, an ordinary freight and passenger boat, running between the city of Detroit and the city of Sandusky, touching occasionally at the Canadian ports of Windsor, Sandwich and Amherstburg. Ashley was clerk on the boat. Whilst she was at her dock at Detroit, on the evening of the 18th September, the prisoner Burley had an interview with him on board, by which it was arranged that Burley should be a passenger in her next morning, for Sandusky, with three of his friends, who were to be taken on at Sandwich. The next day, being the 19th September, Burley came on as a passenger at Detroit, and his three friends at Sandwich. They had the address and manners of gentlemen. On the arrival of the boat at Amherstburg, about twenty men roughly dressed came on board and took passage for Sandusky, paying their fare. The only baggage brought on board here was an old trunk, which, as afterwards appeared, contained revolvers and axes. At about four o'clock, and after the boat had touched at Kelly's Island, in the State of Ohio, and had proceeded southerly about two miles towards Sandusky, having about eighty passengers on board, thirty of whom were ladies, the prisoner Burley appeared on deck, armed with a revolver, at the head of about twenty-five persons, who then armed themselves each with two large revolvers, and some with axes, from the old trunk, and took forcible possession of the boat and made prisoners of all on board. Burley threatened the life of Ashley if he refused to submit. A person called Bell, who took a leading part with the prisoner, came up to Mr. Nichol, the mate of the boat, enquired if he had charge, and said to him that as a Confederate officer he seized the boat and made him prisoner. It was declared among the party that the object in seizing the boat was to enable them to capture the *Michigan*, and to release their friends, the prisoners at Johnson's Island. The prisoner caused to be thrown overboard a portion of the pig-iron freight lying on the main deck, of which there were thirty tons, also a sulky. The iron might have interfered with the movements on that deck. The passengers had been assured that they should not be injured. Ashley had told some of the ladies that rebels had captured the boat. Subsequently this armed party arrived with the boat at Middlebass Island, in the State of Ohio, and there, under the command of the prisoner, captured the *Island Queen*, an American steamer, making her fast to the *Philo Parsons* and making prisoners of all on board, including some twenty five unarmed United States soldiers, and had them all brought prisoners on board the