

COUNTY COURT.

FORBES, J. }
In Chambers. }

[Nov. 27, 1896.]

BAILEY v. ROSS.

Practice—Examination of debtor under 59 Vict. c. 28—Effect of former examination under Con. Stat. c. 38—Agreement to pay by instalments—59 Vict. c. 28, not retroactive.

This was a hearing on a summons taken out by a judgment creditor under 59 Vict. c. 28, with a view to having the defendant, a judgment debtor, committed to jail for a year, on the grounds that the defendant had since the judgment had the means of paying the debt, but had refused to do so.

A preliminary objection was taken, supported by affidavit, that on a similar summons taken out under Con. Stat. of N.B., c. 38, in that some time previously a new agreement had been made, founded on a consideration that the defendant would pay and the plaintiff would accept payment of the debt by instalments.

Held, that by making a new agreement, with consideration therefor, the plaintiff had waived his right under the statute, and was therefore precluded from proceeding further on present summons.

Held, also that the proceeding should have been pressed, if pressed at all, under the act under which first summons had been taken out.

J. D. Hazen, Q.C., for plaintiffs.

A. P. Barnhill, for defendants.

Province of Manitoba.

QUEEN'S BENCH.

TAYLOR, C.J.]

THE QUEEN v. BEALE.

[Nov. 17.]

Criminal procedure—Quashing conviction—Jurisdiction of single judge—Full Court.

Held, that an application to quash a conviction under section 337 of the Criminal Code by way of certiorari, must be made to the Full Court and not to a single judge, as the practice introduced by the Queen's Bench Act, 1895, is expressly provided not to apply to criminal procedure, *Re Boucher*. 4 A. R. 191; *Reg. v. McAuley*, 4 O. R. 643, followed.

Held, also that such an application must be made by summons or rule nisi, and not by notice of motion.

Held, also that in the rule for the certiorari the grounds for moving must be specified: Paley on Convictions (6th ed.), 457.

Motion dismissed with costs.

Elliot, for applicant.

Wilson and Baker, for magistrates.