as an authority and cover to liberate the accused, I should be wanting in my duty if I did not direct such steps to be taken as would in some measure remedy the mischief and insure justice being done in the premises. Blackstone in his commentaries, Vol. 4, p. 296, in treating of commitment and bail says: "Bail is a delivery or bailment of a person to his sureties upon their joining together with himself in sufficient security for his appearance, he being supposed to continue in their friendly custody instead of going to gaol," and "he that is bailed is in supposition of law still in custody, and the parties that take him to bail are in law his keepers, and may re-seise him to bring him in at any time:" 2 Hawkins, P. C. 124. Such being the law, assuming that the bail in the present case are as alleged fictitious, then in reality Mason would be at large: in such a case there must be some remedy. It was denied on the argument that I had any authority to prevent so scandalous an evasion of the law, and that for my doing so no precedent could be found. The absence of precedent can only be accounted for, from no case of the kind having arisen, but if it were so, I would not hesitate to make a precedent, but I am not without authority, for it is laid down in 2 Hawkins, 88, and referred to in 2 Hale, P. C. 125, and in Bacon's Abridgment Title Bail (F.), "That if a person be bailed by insufficient sureties he may be required either by him who took the bail or by any other who hath power to bail him, to find better sureties, and on his refusal may be committed; for insufficient sureties are as none."

If that is law, and on principle and common sense it is, then in this case where it is sworn that the bail are fictitious and utterly worthless, —a conclusion which is borne out by the refusal of the accused to state who they are, or where they are to be found, or that they have any existence,—I shall require the accused Mason to find other sureties, and in case of his neglecting or refusing to do so, to order him to be recommitted for the offence with which he stands charged. An order will therefore go, that Mason do within four days put in good and sufficient bail before myself in Osgoode Hall, viz, himself in $600, and two sureties in $400 each, otherwise he shall be recommitted to the custody of the keeper of the common gaol of the City of Toronto.

*Order accordingly.*

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### Cushman et al v. Reid.

*Law Reform Act of 1869—Order to try in C. C.—Right of County Judge to try Superior Court cause without a jury.*

When an action on a promissory note made in U. S. sued on as if made in this Province, payable in Canadian currency, was brought down for trial from Superior Court to County Court, without a Judge's order.

*Held*, that such case was improperly brought down, and that it was one in which an order was necessary.

*Held also*, that under sec. 18, of the Law Reform Act, judges of County Courts can try case brought down from Superior Courts without the intervention of a jury.

This is an action brought on a promissory note made at Chicago, and dated the 1st March, 1867, whereby the defendants jointly and severally with the other persons who are not sued, promised to pay the plaintiffs, or order, nine hundred dollars, twelve months after date, with interest at ten per cent. This note is declared upon as if made in this Province, and payable in Canadian currency, but by an admission signed by the attorneys of both parties, it is admitted that the amount thereof was payable in United States. Treasury notes or funds (commonly termed greenbacks), and that whatever, if anything, the plaintiff may be entitled to recover the the amount thereof, shall be such sum in Canadian or British currency, as will be equivalent to principal and interest in said notes or funds, allowing credit for the amount endorsed as paid on said instrument. This case was taken down to trial at the sittings of the County Court of the County of Hastings, held at Belleville, on the eight day of June, under the provisions of the Law Reform Act, of 1868, and without a judge's order, under section 4, of 25 Vic., ch. 42, and the issues were tried before the judge of the said County Court, under the 1st sub-section of section 18, of the Law Reform Act, who assessed the damages at seven hundred and fifty three dollars, and fifty three cents, without the intervention of a jury.

*J. B Read* obtained a summons calling on the plaintiff to show cause why all further proceedings in this cause on the verdict rendered therein at the recent sittings of the County Court of the County of Hastings against the defendant and the entry of judgment therein, should not be stayed, and the said verdict set aside, on the grounds of irregularity and impropriety in this, the said cause was tried before the judge of the said County Court, without the order of a judge of either of the Superior Courts of Common Pleas or Queen's Bench, that the said cause should be tried in said County Court; and on the further ground, that there was no jury process awarded to try the issues, and that the said cause was not one which could be carried down for trial at said court, without a judge's order therefor, or if carried down for trial without an order; that such trial was irregular in trying the same before the County Court judge without the intervention of a jury.

Galt, J.—As respects the first objection, I am of opinion, that the case was not one where the amount was liquidated or ascertained by the signature of the defendant, under the provisions of the Law Reform Act of 1868. It is true that the declaration is on a promissory note, and that by the particulars attached to the record, the plaintiff states his claim to be as follows: note $900, interest at 10 per cent, from 1st March, 1867, $204 75; but from the terms of the admission above mentioned, it is manifest that the amount stated in the note is only the basis on which the damages in this case were to be assessed and did not show any liquidated or ascertained, amount and the sum due in the present case, as appears from one of the papers filed, was arrived at by calculating $900 U. S. currency at gold quotation of 141. This case, therefore, was one which should have been taken down by a judge's order, under the 28 Vic. ch. 42, especially as the declaration in this case did not shew the true nature of the claim.

As respects the second objection, namely, that the case was tried by a judge without the inter-