

By an assignment produced, executed 29th December, three or four days before the election, the defendant bargained and sold to one R. S. Rastal for \$160 the premises comprised in the lease, together with the lease and all benefit thereunder, to hold for the residue of the term, and other the estate, right of renewal, if any, and other the assignor's interest therein, subject to the payment of the rents and observance of the lessees covenants. It stated that the lease was already subject to an "endorsement" made by defendant to one Hopkins, living in the United States, and that if that endorsement had the effect of preventing the assignee from collecting the rents during the residue of the term, then the defendant agreed to refund the consideration paid, or such part as assignee could not collect on account of any act of lessor. The lease was stated therein to be in the hands of Hopkins' agent.

By the lease the corporation covenanted to pay rent and taxes, and to repair and keep up fences, and that lessor might enter and view state of repair, and would not sublet without leave, and leave in good repair, and not carry on any business to create a nuisance. Proviso for re-entry on breach of covenant by lessor for quiet enjoyment.

S. Richards, Q.C., shewed cause, and objected that the above statements by the relator might mean any election; that the relator cannot himself prove this; that the relator's interest did not sufficiently appear, and that as far as the disqualification by means of the contract was concerned, that the defendant ceased to have any interest in the contract by reason of the assignment of the 29th December.

C. Robinson, Q.C., supported the summons, and urged that the statement was sufficient, and that the interest of the relator sufficiently appeared, and that Rastal was disqualified as having an interest in a contract with the corporation.

HAGARTY, J.—I think on examining the papers that the statement is made with reasonable clearness, and also that the relator's affidavit to establish his right to interpose is sufficient.

No reversion is conveyed by the assignment referred to. It is a strangely drawn instrument, not of common occurrence. It would doubtless authorize the assignee to receive the rents. But the defendant remains bound under his original covenant in the lease to the corporation, and this personal liability remains unaffected by the assignment whatever may be its true effect. If so it is difficult to see how he can be held to be any other than a person having an interest in a contract with the corporation.

I think I am bound to hold that the defendant is disqualified, and must be removed from office and a new election had.

As to costs I would be reluctant to compel him to pay them if it were not that I cannot help feeling that he became a candidate knowing perfectly well that a question might arise as to this lease, and the time and manner of the assignment on which he relies raise an impression not wholly favourable to him.

I think he must pay the relator's costs.

COMMON LAW CHAMBERS.

(Reported by HENRY O'BRIEN, ESQ., Barrister-at-Law.)

LOCKART V. PHALIRA GRAY—POTTAGE GARNISHEE.

Con. Stat. U. C., cap. 19, secs. 176, &c.—Statute of Anne—Claim by Landlord to rent, on execution against tenant—Division Court bailiff—Attachment of debts.

Where an execution creditor has under the statute of Anne paid rent demanded by a landlord upon an execution against the goods of his tenant upon the premises of the former, and the sheriff levied as well for the rent as the execution debt, the sheriff becomes the debtor of the execution creditor for both sums and liable to him in an action for money had and received.

And so under the Division Courts Act, the bailiff of a Division Court would in a like case, also be liable, and therefore the execution money in his hands might be attached as a debt due to the execution creditor, to satisfy the demand of another execution claimant against him. *Semble*, that money in hands of a Division Court bailiff may be attached.

[Chambers Jan. 26. 1866.]

The facts of this case were that Pottage, as bailiff of the 6th Division Court of York and Peel, had, in or about October 1864, certain executions in his hands as such bailiff, to be executed against the goods and chattels of one Albert Gray, a son of Phalira Gray above mentioned. When the bailiff seized under these writs, Phalira Gray claimed the goods as her own. An interpleader was thereupon tried in the Division Court, which was determined against her.

After the decision she gave notice to the bailiff that she claimed \$200 for one year's rent, due to her by her son Albert Gray in respect of the premises upon which the goods had been seized. The sale of Albert Gray's goods took place in February, 1865.

Albert Gray denied owing his mother Phalira any rent at all. The bailiff denied that he sold for the rent claimed, and said he was served with the notice claiming rent before the sale, but that at the time of the sale, Phalira still claimed the goods as her own, and did not claim for rent at all. Affidavits were filed on each side.

It was admitted that the bailiff received notice of such a claim before he did sell.

C. McMichael, on behalf of the garnishee, Pottage, referred to the statute of Anne, and argued that rent even after it was due (which is said to have been the case here, if there was such a claim as rent at all) could not be attached in the hands of the bailiff or sheriff, because it was said the landlady could not sue for it as a debt owing to her by the bailiff or sheriff, her only remedy against the officer being for selling without leaving a sufficiency of distress upon the premises to satisfy the year's rent, and that as the landlady could not sue in such a case for a debt, the judgment creditor could not attach the money in the officer's hands.

Blivins, for the judgment creditor, contended that however, the law may be under the statute of Anne, it is different under the Division Court Act.

A. WILSON, J.—The question is whether there is such a difference as that contended for by the judgment creditor; if there be not, this application must fail.

The statute of Anne provides, "that no goods upon lands which are leased, shall be liable to be taken in execution unless the party at whose suit the execution is sued out, shall, before the removal of the goods from the premises, by virtue of the execution, pay to the landlord all such sums as shall be due for rent at the time of tak-