adjudging him to pay a fine, &c., would be sufficient. In the present case there is evidence of that fact by each of the parties tried, and in addition thereto that they were committed in default of payment, and actually did pay; and although, to constitute a formal conviction according to the statute 16 Vic. ch. 178, sec. 13, it must be under the hand and seal of the justice, I do not at present see that the instrument drawn up in the form of convictions, though without a seal, on proof of the defendant's writing or signature thereto, would not be evidence as against him of the facts therein contained.

I have felt more doubt as to the recovery of the three separate penalties, because I am convinced that if the defendant had made one return in the form given in the schedule to the act, including therein each of the three convictions mentioned in the declaration, with the details called for by the form, this would have been a compliance with the statute; and if one such return would be enough, it may be asked why more than one penalty for the not making it should be incurred.

But in answer, it must be remembered, that the omission of any one conviction from the return, would subject the justice to the penalty, though he had returned all but one, for he is to make a return of "any" (which I construe every) conviction had before him. And though "he incurs a like penalty for making a false, partial, or incorrect return," I think these words do not point to a return from which a conviction is wholly omitted, but to some wilful defect or mistatement in regard to the conviction or convictions of which a return is made in apparent compliance with the statute.

Besides, in the present instance, if each of the parties convicted, (or any other party,) had brought an action charging only one conviction, and the absence of any return thereof, and claiming one penalty on that account, I do not see how the defendant could avail himself of the pendency of any one of such actions, or even the recovery therein, in bar of any other of them, for the breach of duty alleged in each would be different, but if the due return of one would be no bar to an action for not returning another, which I think it would not, then I do not see how, being sued for not making a return of one conviction could be any answer to another action for not making a return of another, and if not, I do not see why any number of penalties for distinct breaches of duty may not be recovered in one action.

I think the rule must be discharged.

Per cur.—Rule discharged.

COMMON LAW CHAMBERS.

Reported by C. E. English, Esq., M.A., *Barrister-at-Law.*

Crombie v. McNaughton.
Warnock v. McNaughton.

Sheriff—Payment of money into Court—Order on Sheriff to pay over.

When sheriff has improperly paid money into court, a judge will not order sheriff to pay the costs of such payment into court, but the proper application is for the sheriff to pay over the money returned by him as made without reference to the payment into court.

Quære—Should an application for an order on the sheriff to pay over money be made to the full court, or to a judge in chambers?

The particulars of these cases sufficiently appear in the judgment.

Richards, J.—Summons calling on George Davidson, Esquire, Sheriff of the County of Waterloo, to show cause why the money paid into court in this cause by the sheriff should not be paid out to the plaintiff, and why the sheriff should not pay the costs, expenses and per centage arising from such payment into court, and the costs of rule for the sheriff to return the writ of *fieri facias* in this cause, and the costs of this application.

In *Stockdale v. Hansard*, 8 Dowl. N. P. 529, S. C. 11 A. & E., Lord Denman says, "I think it is the clear practice of the court, flowing out of the relation between this court and its officers, that when a sheriff has money in his hands and does not pay it over, we are bound to interfere; and if the sheriff shows any authority not legal and sufficient to warrant him, that we are bound to say that he must pay it over." In the same case, Littledale, J., says, "The question here is, how is the plaintiff to get his money? He had two remedies, by action, or by motion. He has adopted the latter, and it was competent to him to do so." There is no doubt, I think, that a sheriff may be ordered to pay over to a plaintiff money which he has made on an execution, when he returns that he has made such money according to the exigency of the writ. *Bittan v. Tomlinson* (16 L. J. C. P. 138), *Wood v. Wood* (4 Q B. 397), are also to the same effect. *Shuter v. Leonard* (3 O. S. 314) is an authority to show that it is the duty of the sheriff to pay over money to the party entitled thereto, and that he cannot return the writ to the crown office, and pay the money into the hands of the clerk, and thereby discharge himself from liability to the plaintiff in the original suit. *Gladstone v French*, in U.C. C B. Hil. Term, 22 Vic., also confirms the case in 3 O. S.

It therefore appears to me that the sheriff's course was irregular in paying the money into court.

If the sheriff has made the money, and has so returned, which from the papers produced I understand is the case, the proper course is either to sue him for the money, or apply to the court for an order directing him to pay it over to the plaintiff.

If the plaintiff assents to the paying of the money into court, and the sheriff does not claim to be discharged from liability to others who may claim the money from him, but consents to its being paid over to the plaintiff, there is no reason why an order may not go to that effect; in which event I do not see why the plaintiff, from recognizing the payment into court, should not pay the clerk's charges therefor. If he elects so to do, he may with the sheriff's consent take an order on this summons, without costs, otherwise the summons will be discharged without costs. The plaintiff may then apply to the court or a judge in chambers for an order to pay over the money, if the sheriff's return warrants such an application, or he may sue the sheriff for money had and received.

The practice shows that if the sheriff returns the writ within the time mentioned in the rule for that purpose, he is not liable for the costs of the rule.

The affidavits filed for plaintiff show a course of conduct on the part of the sheriff in relation to the paying of the money into court on this writ not quite satisfactory, and in discharging the summons it will be without costs.

Summons discharged.

In *Warnock v. McNaughton*, the money was not accepted by the clerk of the crown, but was returned to the sheriff after he had informed the plaintiff that he had paid it into court; so that the summons in that case cannot be made absolute. But for the same reason as already mentioned, it will be discharged without costs.

If the plaintiffs in these suits should be advised to apply for an order directing the sheriff to pay over the money, they must consider, after referring to *Stockdale v. Hansard*, if the application should be to the full court or a judge in chambers.

Summons discharged.

Blackman v. O'Gorman.

Practice—Bail—Render.

Where there is any doubt as to the validity of the render of bail by their principal, a judge in Chambers will not order an exoneretur to be entered in the bond, but will leave the bail to plead it in bar of the action against themselves.

The particulars of this case appear in the judgment.

Robinson, C. J.—Summons to shew cause why an exoneretur should not be entered on the recognizance of bail in this cause, and the bail discharged from all liability, on the grounds that they have rendered their principal to the Sheriff, upon the writ of *Ca. Sa.* issued in this cause.

The Sheriff's certificate is produced dated 30th April, 1859, in which he certifies that on 18th April, 1850, O'Neil and O'Donohoe, bail for defendant, rendered him, the said defendant, into his custody as Sheriff, in their discharge; and that he did by virtue of a *Ca. Sa.* issued in this cause, and before the return day of the writ, receive the said defendant O'Gorman, and held him in custody in satisfaction of such writ, and before the return day thereof.

And he further certifies that the said O'Gorman was on the 26th