point, not unimportant changes made in the words of the statute by the consolidation of it.

I think we may infer that this change was intentionally made; the giving the action of debt by express words, when the proceeding in *debt* was one which could be readily taken in the County Court, whilst the proceeding by bill or plaint that had previously existed was not one which was at all appropriate to that court. This would, also, harmonise with the provisions of the Consolidated Statute of Canada, authorising certain suits for pecuniary penalties to be recovered "in any court having jurisdiction to the amount of the penalty in cases of simple contract."

It certainly would seem absurd to maintain the distinction contended for in proceeding to recover penalties under this particular statute, when other penalties of a much greater amount could be sued for in the County Court, and (in determining the latter) points of quite as much difficulty would arise as in disposing of the question likely to occur under this statute.

The County Courts have now such extended jurisdiction, compared with what they formerly possessed, that I do not think it unreasonable that the legislature, when the statutes were consolidated, should consider that they might safely be entrusted with the disposal of this kind of penal action, when $80 was the sum involved, and that the change made in the law at that time was with a view of putting the matter beyond reasonable doubt, and establishing something like a uniform rule in relation to these actions.

The only point argued before us on this appeal was whether the County Court had jurisdiction, and as we are in favour of the plaintiff on that ground we shall allow the appeal without costs, and direct that the rule *nisi* to enter a nonsuit in the court below be discharged.

Appeal allowed.

COMMON LAW CHAMBERS.

(*Reported by* Henry O'Brien, Esq., *Barrister-at-Law.*)

Burns v. Steel.

*Interpleader—*28 *Vic. cap.* 19, *sec.* 2—*Claim by guardian of insolvent's estate.*

An execution was delivered to a sheriff against the goods of the defendant, upon which he seized certain goods. These goods were claimed by the guardian in insolvency of the estate of the defendant, against which defendant a writ of attachment under the Insolvent Act had also issued to the same sheriff. The sheriff applied for relief under the Interpleader Act.

Held, that under 28 Vic. cap. 19, sec. 2, he was entitled to protection, and an issue was directed.

[Chambers, December 7, 1865.]

An application was made for an interpleader by the sheriff of the United Counties of York and Peel, upon a claim made by W. T. Mason, as guardian of the estate of the defendant, under a writ of attachment issued under the Insolvent Act of 1864. The sheriff seized under the execution in this cause against goods on the 31st of August last. The writ was delivered to him on the 30th of August, 1865.

The writ of attachment issued on the 7th Sept. and was delivered to the sheriff on the same day, and the notice of claim was given to the sheriff on the 8th of September.

Tilt for plaintiff. *D. McMichael* for the guardian, the claimant. *Osler* for sheriff.

Adam Wilson, J.—The question is whether an interpleader issue can be directed.

The execution creditor contends that after his execution has bound the goods, his claim cannot be affected by any proceedings in bankruptcy; and whether it can or cannot, the Interpleader Act does not apply, because that only affords relief to the sheriff when the insolvency proceedings rank first and the execution creditor claims to seize the goods as the property of the insolvent, and not to the case of the execution creditor ranking first and the insolvency proceedings coming after his writ.

The statute of 28 Vic. cap. 19, sec. 2, provides that in case any claim be made to any goods or chattels, and taken or intended to be taken under an attachment against an absconding debtor, or under any proceedings under the Insolvent Act of 1864, or in execution under any process issued by or under the authority of any of the said courts, or to the proceeds thereof, &c., by any person not being the person against whom such attachment or proceeding or proceedings or execution issued, or by any landlord for rent, or by any second or subsequent judgment or execution creditor claiming priority over any previous judgment or execution process or proceeding, then and in every such case, upon the application of the sheriff or other officer to whom the writ is directed, &c., the court or judge may by rule or order call before such court or judge, as well the party who issued such process as the party making such claim, and may thereupon exercise, &c. The claim, then, as one to be made to any property taken or intended to be taken, or to the proceeds thereof under, 1. An attachment against an absconding debtor. 2. The Insolvent Act. 3. Any process issued by or under the authority of the courts. 4. By any landlord for rent. 5. By any second or subsequent judgment or execution creditor claiming priority over any previous judgment or execution.

In this case the property has been taken by the sheriff under the execution in this cause. The sheriff has not taken it under the Insolvent Act. So far the case is not within this particular enactment. The sheriff, however, may reverse the proceedings; and although he has taken the property under the execution, he may still take, if he please, or intend to take, the property under the warrant which has been issued under the Insolvent Act; or he may, when the proceeds are in his hands, apply or propose to apply the same to the insolvency process. This would, no doubt, be within the Act entitling the sheriff to apply the protection upon any claim being made against him by the execution plaintiff But the plaintiff has not made the claim, because so far the sheriff has taken the goods for him, and while this remains so he will not be a claimant; but if the sheriff reverse the position of the parties and make the seizure, or hold the proceeds for the guardian in insolvency, the creditor will be compelled to become the claimant.

If, however, nothing of this kind should be done, there is the third case above mentioned—that of a claim being made to property taken, &c. &c., "in execution under any process issued by or under the authority of any of the said courts, * * * by any person not being the person against whom such attachment, &c., is-