

Held, that notwithstanding his prior use of the original machine, the patent was valid, and that the patentee was entitled to the exclusive use of the inclined plane. [Mowat, V. C., dissenting.]
—*Summers v. Abell*, 15 Chan. Rep. 532.

DOWER—DEFICIENCY OF ASSETS.—Where a wife joined in a mortgage, and on the death of the husband there are not sufficient assets to pay all his debts, the widow is not entitled to have the mortgage debt paid in full out of the assets, to the prejudice of creditors.—*White v. Bastedo*, 15 Chan. Rep. 546.

ADMINISTRATION BOND—BREACH—PLEADING.
—In an action against the sureties in an administration bond, plaintiff assigned as a breach of the condition of the bond set out, and which condition was in exact accordance with the form prescribed by 33 Geo. III. ch. 3, and 22 & 23 Car. II. ch. 10, that although a large amount or value of goods, &c., of the deceased had come to the hands of the administrator, he had not well and truly administered the same according to law:

Held, on demurrer, a bad breach of the condition of the bond; and that the only two modes in which a valid breach of thin condition can be assigned are, non-feasance in not duly collecting and getting in the estate, whereby it is lost or endangered, or malfeasance in wasting the assets collected by the conversion of the same to the administrator's own use, or some other misappropriation whereby the estate is diminished to the prejudice of those entitled to have it forthcoming in the hands of the administrator to abide the orders of the Court.—*Neil v. McLaughlin*, 27 U. C. C. P. 350.

ONTARIO REPORTS.

QUEEN'S BENCH.

(Reported by CHRISTOPHER ROBINSON, ESQ., Barrister-at-Law, Reporter to the Court.)

PECK V. McDUGALL.

Division Court—Examination of defendant—Commitment—Pleading—Practice.

The plaintiffs demurred to the replication to a plea justifying an arrest under an order to commit, issued by the Division Court for disobedience of an order to pay a judgment debt within a named time. Defendants joined in demurrer and excepted to the plea.

Held, as to the plea—1. That it was unnecessary to state the proceedings before judgment, so as to give the Division Court jurisdiction, the amount stated being clearly within it.

2. That the issue of execution in due course, and its delivery to the plaintiff and return, were sufficiently stated.

Semble, that the issue and return of execution is not, under the Division Courts Act, a condition precedent to the examination of defendant.

It was alleged that when the summons to examine issued the plaintiff resided in the county, but not that he continued so resident at the issue of the summons to commit. *Held*, sufficient, for this would be presumed.

It was not averred that the plaintiff was examined on oath before the Judge, or any other evidence adduced. The warrant set out in the replication, recited that it appeared to the satisfaction of the Judge that he had contracted the debt under false pretences. *Held* sufficient, for it is not necessary in all cases to take evidence on oath, and the Judge might have acted on the plaintiff's admission.

Semble, that the omission of the Clerk to enter an order of commitment in the procedure book, could not affect a defence under such warrant.

Held, also, that the Judge had power to make an order to pay in nine weeks or for commitment on default; and as a summons and order to commit issued before the plaintiff's arrest, it was immaterial that the first order had not been entered, or that three months had elapsed after it before the warrant issued.

The order to pay or for commitment issued in May. In October, on the return of a summons, an order was made to commit for non-appearance and disobedience of the order to pay. The warrant of commitment recited that the order of May issued because it appeared to the satisfaction of the Judge that the plaintiff had incurred the debt under false pretences, and that on the return of the summons in October he had not appeared.

Held, that the ground of commitment sufficiently appeared.

Declaration for false imprisonment.

Plea. That before the alleged trespass, to wit, on the 22nd of October, 1864, the defendant recovered judgment against the plaintiff in the Seventh Division Court of the United Counties of Huron and Bruce, for the sum of \$50.84, for debt, and \$3.30 for costs, and thereupon, the said judgment remaining in full force and unsatisfied, the defendant in due course of law, and by the judgment of the said Court upon said judgment so recovered as aforesaid, issued a warrant of execution against the goods and chattels of the plaintiff, directed to one T, then being a bailiff of the First Division Court of the said United Counties of H. & B., within which Division the said plaintiff then resided, commanding him, &c., (setting out the warrant) which said warrant was subsequently, to wit on the 2nd of May, 1865, returned *nulla bona*.

That thereupon the said judgment still remaining in full force and unsatisfied, and the said plaintiff then being a resident in the said County of Huron, the said defendant, on the 6th of May in the year last aforesaid, sued out of the said Seventh Division Court upon the said judgment a summons to examine the said plaintiff at a time and place therein named, pursuant to the Statute in such case made and provided, which said summons was on the 15th of May, in the year last aforesaid, duly served on the said Leonard Peck; that on the return thereof, to wit at the village of Bayfield, in the County of Huron, aforesaid, as therein mentioned, on the 31st day of May, in the year last aforesaid, the said plaintiff being then present in obedience to said summons, by the award and order of R. C. Esquire, Judge of the said Division Court, then presiding in the said Seventh Division Court, an order indorsed on said summons was made by the said Judge in the words and figures following, that is to say, "The defendant being present is ordered to pay in full in nine weeks from the date hereof, or in default of payment to be committed for 30 days in the common gaol. Dated this 31st day of May, 1865."

(Signed) R. COOPER."

That on the 16th of September, in the year last aforesaid, the said judgment still remaining in full force and unsatisfied, the said plaintiff sued out of the said Seventh Division Court upon the said judgment a summons, under the seal of