

had paid into the said division court should not be refunded to him.

The affidavits shewed that the property in dispute was the crops growing on the east half of lot number three, in the tenth concession of the township of King, which one Pottage, the bailiff, had seized in the month of June last, as the property of William McKinley and Sidney McKinley; that William McKinley had conveyed the said land to Francis McKinley for a good and valuable consideration; and that the crops belonged to the said Francis McKinley, who had been in the continuous possession of the land from the date of the conveyance; that after the seizure Francis McKinley gave notice of his claim to the bailiff, who, thereupon, caused an interpleader summons to issue, calling upon Francis McKinley to appear, and prove and sustain his right to the said property; that on the first day of July last he did appear before the said John Boyd, Esquire, the said judge, and, by Mr. O'Brien, who acted for him, objected to the jurisdiction of the court, on the ground that the title to land came in question; that a jury which had been summoned at the instance of William Munsie was also objected to, on the ground that there was no provision of law for juries on such issues; that Mr. Boyd overruled these objections, and the case went to the jury, who found for Munsie; that afterwards a new trial was granted, on condition that the debt and costs should be paid into court, which was done.

During the present term, *Bull*, for Munsie and Boyd, shewed cause. He filed affidavits denying that the jurisdiction had been questioned, and cited, *Denton v. Marshall*, 7 L. T. N. S. 689; *Walsh v. Ionides*, 22 L. J. Q. B. 137; *The Queen v. Doty*, 13 U. C. Q. B. 398; *Richards v. Mendenhead Local Board of Health*, 27 L. J. Mag. Ca. 73; *Joseph v. Henry*, 19 L. J. Q. B. 369.

O'Connor supported the rule, and contended that in order to sustain his claim, Munsie attacked the conveyance to Francis McKinley, so as to show that the title to the land on which the crops were growing was still in William McKinley, and thus brought the title to the land in question; and that instead of deciding himself on the interpleader matter, the judge had summoned and sworn a jury, for which he had no authority. He cited *Marsden v. Wardle*, 3 Ell. & Bl. 695; *Thompson v. Ingham*, 14 Q. B. 710; *Kerken v. Kerken*, 3 E. & B. 399; *Con. Stats. U. C. ch. 19, sec. 54, subsec. 4, sec. 55, subsec. 2, secs. 61, 175.*

*Hector Cameron (amicus curiæ)*, cited *Trainor v. Holcomb*, 7 U. C. Q. B. 548.

J. Wilson, J., delivered the judgment of the court.

The 4th subsection of section 54 of the "Act respecting the Division Courts" provides, that these courts shall not have jurisdiction in actions in which the right or title to any corporeal or incorporeal hereditaments comes in question. But the 175th section provides, that "in case a claim be made to or in respect of any goods or chattels, property or security, taken in execution, or attached under the process of any division court, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process issued, then, subject to the provisions of the 'Act respecting Absconding Debtors,' the

clerk of the court, upon application of the officer charged with the execution of such process, may, whether before or after the action has been brought against such officer, issue a summons calling before the court out of which such process issued, or before the court holden for the division in which the seizure under such process was made, as well the party who issued such process, as the party making such claim; and the county judge, having jurisdiction in such division court, shall adjudicate upon the claim, and make such order between the parties in respect thereof, and of the costs of the proceeding, as to him seems fit; and such order shall be enforced in like manner as an order made in any suit brought in such division court, and shall be final and conclusive between the parties."

In this clause is embodied this important provision, "that thereupon" (that is, upon the bringing of the party who issued the execution and the party claiming the goods before the court), "any action which has been brought in any of Her Majesty's superior courts of record, or in any local or inferior court, in respect of such claim, shall be stayed; and the court in which such action may be brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels or property or security were so taken in execution, or upon attachment, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issuing of such summons out of the division court."

By the statute the jurisdiction is limited, first, in all personal actions where the debt or damages claimed do not exceed forty dollars, and, secondly, to all claims and demands of debt, account, or breach of contract, whether payable in money or otherwise, where the amount or balance claimed does not exceed one hundred dollars.

If an action were brought in a division court to try the right or title to any corporeal or incorporeal hereditaments, or if a personal action, or an action for debt, account or breach of contract, or covenant or money demand, had been brought clearly beyond its jurisdiction, and attempted to be maintained, prohibition would have been granted. But in an interpleader matter, which is collateral to the action, is the jurisdiction limited? A quantity of goods, a single chattel, a piano or a horse, in value much exceeding one hundred dollars, may be the subject of dispute. Is there any doubt of the jurisdiction of the division court judges to try whose they are, in an interpleader matter? But the jurisdiction is limited in regard to value to forty dollars in matters of tort, which a seizure of the goods of B. for the goods of A. must necessarily be. The question of whose the land is, may arise on a claim of a landlord for rent from the bailiff, but the statute gives express jurisdiction; or it may arise, as in the case before us, on the question of whose the crops are; but it is a collateral question, arising in a matter collateral to the action. Does it therefore, follow that the court has no jurisdiction? There is no express limitation of jurisdiction in the act in reference to interpleader matters; and we may gather the intention of the Legislature that none was intended from the fact, that to enable a bailiff to make one hundred dollars and the costs of the suit, goods to a much greater value must necessarily be seized. To enable the judge