

other construction this Court would lend its aid to further the attempt, which has too evidently been made, to render its process subservient to the purposes of fraud and injustice. But there is yet a point arising out of the facts of this case, which is peculiar to itself, and which we must now notice, as it goes to prove that the lots in question were sold without any authority.

It must be remembered that the whole of the proceedings had in Mr. Rolland's case, were made to effect a sale by the Sheriff and were by consent; and we can have no hesitation after what has been stated—nay, we are bound, to hold the respondent Ayer to the very letter of these proceedings.

Now the defendant's confession of judgment, which was made in writing and was accepted by Mr. Rolland, constituted an agreement between the parties, and the judgment and execution which followed were solely calculated to carry this agreement into effect. The confession referred entirely to the subject matter of the action, and the judgment did the same. The subject matter of the action was a debt of £51, due to Mr. Rolland by Daniel Ayer, and the means by which that debt with interest, the costs of suit and the expenses of the seizure and sale were to be paid, constituted the whole legitimate object of the execution.—The Sheriff, therefore, had no authority to sell more of the lands which he was required to seize than would produce the amount of the debt, interest, costs and expenses which have been mentioned, and if he did sell more, his sale for the surplus was null and void.

The return of the Sheriff and the deposition of Perry, the Deputy Sheriff, prove that the whole sum was realised by the sale of the 2nd, 3rd, 4th and 5th items of the lots which he was authorised to sell by the execution, with the exception only of a small sum of £2; and the Sheriff, for this reason accordingly declined proceeding to the sale of the two lots mentioned in the 6th item, of which the first was not one of the three for which this action was instituted, although the second was. But John Ayer, the respondent, insisted that he should proceed to sell both, and they.