

tained in an assignment by R.B.M., for the benefit of his creditors:—

Held (obiter—See ASSIGNMENT, 8), that R.B.M. having suffered a judgment to pass against him at the suit of J.C.M., which was unaffected by the subsequent assignment, there was nothing to prevent his making a payment thereon. And having in effect done so completely and irrevocably, with the legacy due him, there were no longer monies of his in the hands of J.C.M. And his right of recovery against J.C.M. having thus terminated, the right of the plaintiff, dependent thereon, no longer existed.

Banks v. Mackintosh, 27/480.

6. Attachment—Distress for rent.]—Plaintiff caused an attachment to issue against the defendant as an absent or absconding debtor, to recover a balance due for goods, and also for rent. Subsequently he distrained for the same rent on part of the property levied under the attachment. At the instance of a subsequent attacher: Held, that by distraining he lost his right of action for the rent, and could not hold his attachment for so much of his claim.

Gray v. Curry, 22/262.

7. Attachment—Right of creditor in possession of property as against attachment.]—On the 8th September, 1892, the property of M., who had been a livery stable keeper at Truro, and was absconding from the Province, was levied under attachment, by the defendant sheriff. At the time of the levy a horse and carriage were out on hire. On the 13th these were returned to Truro by train, and were taken possession of by the plaintiff, who removed them from the county. The following day the plaintiff, who was a creditor of M., telegraphed him an offer for the horse and carriage, which a few days later was accepted by letter. Until this time plaintiff kept the property out of the county. On October 17th, it was levied on under attachment and subsequently sold in part. Plaintiff brought trover against the Sheriff, who contended that the property was bound by the original writ of attachment of September

8th. There was no evidence that the plaintiff, at the time he took possession of the property, and made his offer, had notice of the attachment and levy, but he knew in a general way that the property of M. was likely to be attached, and his action was a bona fide and non-collusive effort to obtain payment of the debt due him by M.

Held, that under Order 40, Rules 32, 41, the attachment did not bind until actual levy had been made, and, meanwhile, plaintiff having perfected a bona fide purchase of the property for a good consideration, and, being in possession, which took the place of delivery, was entitled to recover against the Sheriff levying; but without costs.

Mahon v. Crowe, 28/250.

8. Attachment of goods in possession of third person—Sheriff must justify.]—Action against the Sheriff for wrongful taking of goods out of the possession of plaintiff, under an attachment against J.J., an absent or absconding debtor, which plaintiff claimed as his own property by purchase from J.J.

Held, that the goods having been found in the possession of plaintiff, the onus was on the Sheriff to prove the lawfulness of his action. The possession of plaintiff being sufficient to maintain trespass against a wrongdoer, he need not prove title.

And the Sheriff was a wrongdoer, because the affidavit on which the attachment was granted did not prove that any debt was due by J.J., the absent or absconding debtor.

Quære, in relation to the purchase alleged by the plaintiff, is the Statute of Frauds as a defence, open to the Sheriff? (Note.—*CF. FRAUDS, STATUTE OF*, 12.)

Johnson v. Buchanan, 29/27.

9. Perishable property.]—Lumber and deals exposed to the weather under such circumstances that they cannot be stored, and are hence liable to deterioration, come within the terms of O. 46, R. 5, and may be ordered to be sold. The matter seems to be entirely within the discretion of the Judge applied to.

Bank of Nova Scotia v. Ward, 21/230.