

R.S.O., 1877, c. 50, s. 40 (now Rule 1062), provides for the render of the defendant to the sheriff of the county in which the action against such defendant has been brought; and s. 42 of the same Act (now Rule 1064) provides that special bail may surrender their principal to the sheriff of the county in which the principal is resident or found, and that, upon proof of due notice to the plaintiff of the surrender, and production of the sheriff's certificate thereof, a Judge shall order an exoneretur to be entered on the bail-piece, and thereupon the bail shall be discharged,

*Held*, that the bail were not entitled to be discharged, and that the plaintiff was entitled to bring this action upon the recognizance, because no exoneretur had been entered upon it, notwithstanding the notice of render; but that, the substantial duty of rendering the principal having been performed, the defendants should be relieved upon terms.

The Court ordered that upon the defendants filing an order for an exoneretur within two weeks, and paying the cost of the action within ten days after taxation, the judgment for the plaintiff should be set aside and all other proceedings stayed; otherwise judgment to be entered for the plaintiff with costs.

*Held*, also, that under Rule 89 of T.T., 1856, (now Rule 1085) the liability of bail is limited to the amount of their recognizance; and the plaintiff having recovered in the original action the whole sum sworn to in the affidavit of debt, his recovery against the bail should not in any event be more than that sum.

*Gibbons*, for the plaintiff.

*Watson*, for the defendants.

#### PEARSON v. MULHOLLAND.

*Title to land—Description—False demonstration—Exception void for uncertainty—Operation of release—"Remise, release and quit claim"—Operation of as grant or bargain and sale—14 & 15 Vict., c. 7, s. 2—Possessory title.*

L. in conveying land to S. described it as being composed of the southerly half of Lot 17, in the 4th concession of King, giving it the metes and bounds of the east half. The only part of Lot 17 which L. had was that conveyed to him by B. as a part of Lot 17, giving it the

metes and bounds of the east half the same as in the deed to S.; and the same quantity was conveyed in both deeds.

*Held*, that the metes and bounds given in the deed to S. correctly described the lands intended to be conveyed, and the words "southerly half" were controlled by them.

A sheriff's deed of lands sold at a tax sale described them as "forty-five acres of the south half of Lot 17 in the 4th concession" of King; and the deed to S. before mentioned contained an exception "save and excepting out of the same forty-five acres sold for taxes."

*Held*, that the exception was void for uncertainty; and a subsequent release of lands purchased at the tax sale by the sheriff's vendee to S. had sufficient to operate upon and was effectual as a release.

By indenture of Bargain and Sale made in 1856 between L. and K., in consideration of \$4,000 (the receipt whereof was thereby acknowledged), did remise, release and quit claim unto K., his heirs and assigns, the south half, &c., to have and to hold, &c.

*Held*, that since 14 & 15 Vict., c. 7, s. 2, the words "remise, release, and quit claim" may operate as a grant; and either before or since that enactment they would operate as a bargain and sale.

*Acre v. Livingstone*, 24 U.C.R. 282, not followed.

*Held*, also, upon the evidence, that the defendant had no such possession of the land in question as would extinguish the title of the true owner.

*E. D. Armour*, for plaintiff.

*Merritt*, for defendant.

#### Chancery Division.

ROBERTSON, J.]

[January 9.

NICHOL *et al* v. ALLENBY.

*Injunction—Right to maintain action—Owner of undivided share in land—Purchaser at sale under void partition proceedings—Simple contract creditors—Mortgage of undivided share—Power of Local Master—Lands in two counties.*

In an action for an injunction brought by (1) the owner of two undivided third parts of cer-