fatal irregularity; though undoubtedly the other is the more regular course: both, however, arrive at the same result; the defendants are in no degree prejudiced; and under the extensive authority now given to amend, I should allow an amendment in this respect if it were pressed, and if it appeared essential.

The material question is as to the plaintiff's right, after what has taken place, to take out a further execution against the defendant's goods for the £1050, which, no doubt, was at one time supposed to have been made, and acknowledged by the Sheriff to have been made, by the sale of the defendants' interest (whatever it might be) in this steamer. When I am asked to interpose summarily and set aside this Execution upon the ground that the £1050 has been already made, I think I am bound to take into consideration the fact, that since the Sheriff's sale spoken of, the question of title to the steamer as between Gildersleeve, claiming as vendee of Bethune's interest, and also as assignee of the mortgage given by him; and these defendants who still maintained possession of the boat, has been tried and adjudged upon—Gildersleeve having replevied the boat; that in that action Gildersleeve has been found to be the owner, by title derived quite independently of any interest under the defendants; and that the defendants in that trial confined themselves to attempting to raise objections to the *primâ facie* title of the plaintiff, without setting up any title in themselves, or even explaining what interest, if any, they claimed to have, and from whom or under whom they had acquired it.

It is impossible for me, under the circumstances I have mentioned, to treat the £1050 as being in fact levied, (that is, finally levied) under the writ to Sheriff Corbett; the defendants do not contend that the plaintiffs have in fact received and held the money bid at that sale; but they contend that Gildersleeve, having been content to give £1050, and having in fact given it to the Sheriff for such interest as the defendants' had, and the £1050 having also passed into the hands of the plaintiffs' agent, they (the plaintiffs) are bound by the receipt of this money, and that Gildersleeve is bound by his bid, and the Sheriff by his discharge given to the defendants; so that the money can never again be levied, although it may be that the defendants held no legal interest in the boat, and that Gildersleeve acquired no interest by his purchase at the Sheriff's sale.

The defendants' right, as they contend, could not be prejudiced by anything done between the plaintiffs, or their agent and Mr. Gildersleeve, in giving back the money to Gildersleeve, and taking it from him again as paid on another account; and, no doubt, that argument is correct.

There are still three main facts however: that the defendants turn out, so far as we know, to have had no title to the boat or any interest in her; that Gildersleeve, notwithstanding his bid at the sale, did not get exclusive possession of her from the defendants, but they held by their claim whatever it was, as if no sale had taken place; and he now owns the boat solely through a purchase otherwise made, having derived no advantage from his bid, and the defendants having been deprived of nothing in consequence of that supposed sale.

Under such circumstances I must leave the plaintiffs to proceed at their own risk to collect the residue of their debt.

If Sheriff Corbett is concluded by the sale, and his receipt, and is estopped from returning that he had made nothing besides the £650, which was paid to him in cash, the defendants must take their remedy against him for a false return, or otherwise as they may be advised; and in an action the legal consequences of what has taken place, can be maturely considered and decided upon, in such a manner as will admit of an appeal.

The sum which the plaintiffs are proceeding to collect, as being still due, is large; it may be inconvenient for the defendants to pay it, and I would willingly save them from any sacrifice of property, while it may appear to them possible that they can claim to be relieved from any further payment.

If the plaintiffs feel that without incurring any danger of losing their money they can safely let matters rest until Term, I would readily allow the defendants to renew their application to the full court; but if that is not voluntarily acceded to by the plaintiffs, I will not stop their proceedings, but leave the defendants to their remedy against the Sheriff—for it is clear what the substantial merits of the question are: so far as I can see, the defendants have not through the Sheriff's sale in April parted with or lost anything of value, and Gildersleeve acquired nothing, and the plaintiffs in this suit have profited nothing. It cannot reasonably be insisted therefore that the defendants have paid the plaintiffs the £1050 in question.

NORDHEIMER v. GROVER.

Bail to limits—Discharge by bankruptcy—Exoneretur.

In bail to the limits a Judge will in no case order an *Exoneretur* to be entered on the bail bond.

(March 14, 1857.)

This was an application to have an *Exoneretur* entered on the bail bond, and the bail discharged on the ground that the defendant had obtained his final order of discharge in the Insolvency Court: sec. 302, C. L. P. Act.

ROBINSON, C.J.—The bail to the limits being entered for the Sheriff's security, I do not accede to an application to have an *Exoneretur* entered on the bail bond, on the defendant and the securities of the bail showing that the defendant obtained a final order of discharge from the Insolvent Court. The entering an *Exoneretur* on the bail-piece on the surrender of the principal is a different thing. I cannot tell but that the certificate may be shown to have been obtained by fraud, and may be hereafter cancelled for that cause; nor but there may have been a breach of the bond before the certificate was granted. If the Court would do anything more than stay the proceedings on the bail bond, when an action in such a case as this might be brought, it would be the ordering the bail bond to be given up to be cancelled; for the bond to the sheriff is not in the possession of the Court, but of the sheriff.

Summons discharged without costs.

MOSS v. DAYLY.

Satisfaction Piece—Executed out of jurisdiction.

A certificate of the due admission of an attorney of Lower Canada must be produced, with Satisfaction Piece, in suits in Upper Canada executed before him.

(March, 1857.)

This was an application for an order that satisfaction be be entered on the Roll in this cause on filing the Satisfaction Piece now produced.