

The solicitor claimed that by his exertions in these actions he had saved the goods from being sacrificed by summary sale, and brought this action to have it declared that he was entitled to a preferential lien for costs upon the estate in the hands of the assignée:—

*Held*, that, even if it were shewn that stopping the sale under the mortgage were a benefit to the estate there was no jurisdiction, without the direction of a statute, to charge the property recovered or preserved, and without a money fund there was no subject for a lien.

Costs as of a successful demurrer only were allowed to the defendant. *Tremear v. Lapprance*, 137.

2. *Action brought without proper authority—Costs ordered to be paid by solicitor*—An action, brought by solicitors in the plaintiff's name, was dismissed with costs, and judgment entered against the plaintiff. The solicitors had acted without any written retainer from the plaintiff, or any instructions from her personally, relying on instructions received from plaintiff's husband, which she positively denied ever having given, and also on letters written to her, the sending of which was not strictly proved, and which she denied ever having received.

On a motion made therefor by the plaintiff the judgment and all subsequent proceedings were set aside, and the solicitor ordered to pay the plaintiff's costs as between solicitor and client, and the defendant's costs as between party and party. *Scribner v. Parcells et al.*, 554.

### SPECIFIC PERFORMANCE.

1. *Exchange—Time of the essence—Date of performance on Sunday.*—

In an action for specific performance, even when time is of the essence of the agreement, if the party in default has done what in him lay to perform the contract, the Court may, in the exercise of its discretion, grant the relief claimed.

And where, by such agreement, the conveyance was to be tendered by the plaintiff to the defendant and the transaction closed on the "first day of June" which fell on Sunday, when no tender was made, and the conduct of the defendant on the following day was such as to exclude a tender on that day, in an action for specific performance the plaintiff was held entitled to judgment. *Cudney v. Gives*, 500.

### STATUTES.

13 Eliz. ch. 5, sec. 3.]—*See FRAUDULENT TRANSFER OF GOODS*, 1.

9 Geo. II. ch. 5.]—*See CRIMINAL LAW*, 4.

35 Vict. ch. 79, sec. 12 (O.)]—*See MUNICIPAL CORPORATIONS*, 1.

41 Vict. ch. 41, sec. 3 (O.)]—*See MUNICIPAL CORPORATIONS*, 1.

R. S. C. ch. 120.]—*See SALE OF GOODS*, 1.

R. S. C. ch. 129.]—*See INJUNCTION*, 1.

R. S. C. ch. 173, sec. 3.]—*See CRIMINAL LAW*, 3.

R. S. C. ch. 173, sec. 23.]—*See FRAUDULENT TRANSFER OF GOODS*, 1.

R. S. C. ch. 174, sec. 239.]—*See CRIMINAL LAW*, 5.

R. S. C. ch. 178, secs. 58, 84.]—*See SESSIONS*, 1.

R. S. C. ch. 178, sec. 87.]—*See INTOXICATING LIQUORS*, 4.