

There is nothing in the objection that the rule did not offer the appellant the alternative to pay the value of the goods. This was decided by the Court of Appeal in the case of *Leverson & Cunningham & Boston, mis en cause*,\* and I am not aware of any case that has reversed or in any way put in question that decision. It was before the Code, but article 597 C.C.P. seems to have been carefully drawn so as to preserve the old law. The guardian is condemned on pain of coercive imprisonment to produce the property or to pay the amount due to the seizing creditor. The article then goes on to say: "He may, however, upon establishing the value of the effects which he fails to produce be discharged upon payment of such value." This, then, is an exception in his favour, and I take it, open to him at all times, since he can be "discharged" upon payment of such value. He, then, has no need of a reservation in the judgment of a right which he has by law, and of which the judgment could not have deprived him.

The other objection is that he has been condemned to pay costs incurred by a third party claiming the right of property in part of the goods seized. What the law says is that the guardian shall pay the "amount due to the seizing creditor." The rule in this case is somewhat confused in its form. After setting up the failure to produce in accordance with the summons, the rule goes on: "That the said guardian, McCaffrey, is ('be' is probably intended) ordered to produce and hand over to the said sheriff the said moveables, goods and effects seized in this cause, and placed in his care and keeping, and described in the said schedule hereunto annexed, and that in default of his so doing he be *contraint par corps*, and incarcerated in the common gaol of this district, until he has produced the said moveables, goods and effects, mentioned and described in the *procès-verbal* of the seizure thereof, by the said sheriff, and also in the said schedule annexed to the said writ of *venditioni exponas*, and also in the schedule hereunto annexed, or pay the value thereof, to wit, \$539.42 currency, being the amount of the debt and all the costs in this cause, with interest on \$262.62 currency, from the 2nd of January, 1875, on \$3.17 cur-

rency, from the 19th day of April, 1875, and on \$108.05 currency, from the 20th day of June, 1876, at the rate of six per cent. per annum, unless cause to the contrary be shown on the 15th day of April next (1879), at ten of the clock in the forenoon, or as soon as counsel can be heard, at the Court House, in the village of Sweetsburgh, in the district of Bedford, sitting the said Court, the whole with costs."

He has, therefore, a tender to pay the value, if that had been necessary, and the value is fixed at \$539.42, which is, according to the calculation of the party moving, and which is in no wise contradicted, "the amount of the debt and all the costs in this cause." As the *mis en cause* has not contested the value, I do not see how we can interfere and say that the goods were of less value. But the amount of the debt and costs, on its face appears to be more than he has to pay in order to get rid of his imprisonment, by all the amount of the costs on Mahedy's opposition, and this must be deducted. The rule goes on to ask more than this, and more than plaintiffs contend is the value of the goods, and as the judgment following the rule orders the *mis en cause* to be imprisoned not only until he shall have paid \$539.42, but also interest over and above their value, I think the judgment must be revised in this respect also. The appeal will therefore be maintained with costs, and the judgment will be modified by deducting the amount of these costs \$71 and some cents, and by striking out the subsequent interest.

The judgment is as follows:—

"Seeing that the judgment of the 16th day of April, 1879, declaring the rule issued in this cause absolute, orders that the said Henry McCaffrey, *mis en cause* in the Court below, now appellant, be *contraint par corps* and incarcerated in the common gaol of the District of Bedford until he shall have paid to the Respondents (plaintiffs below) the sum of \$539.42, being the amount of the debt and all the costs in this cause, and with interest on \$262.62 from the 2nd day of January, 1875, on \$317 from the 19th day of April, 1875, and \$108.05 from the 20th day of June, 1876, at the rate of six per cent., and condemns the said appellant *mis en cause* in the Court below to pay the costs of the said rule, to be regularly taxed at \$28.10, currency;

\* 2 L. C. J. 297.