property in the plaintiff nor a conversion by the defendant were proved

The learned judge thought there was no evidence of fraud to vitiate the sale to Gallon, and asked the jury to assess the value of the lumber; and it was agreed that the verdict should be entered for the plaintiff for the amount assessed, with leave reserved to the defendant to move to enter a nonsuit.

In Easter Term, *C. S. Patterson* obtained a rule to shew cause why a nonsuit should not be entered on the leave reserved, on the ground that the goods were lawfully sold, and that the defendant was not shewn to have converted the goods, having done no act affecting them, and there having been no demand made upon him for them. He cited *Burroughes* v. *Bayne*, 5 H. & N. 296.

In this Term *Hector Cameron* shewed cause, citing *Carroll* v. *Lunn*, 7 C. P. 510; *Grainger* v. *Hill*, 4 Bing. N C. 212; *Billiter* v. *Young*, 6 E. & B. 1 Add. on Torts, 271.

Consol. Stat. U. C. ch. 19, secs. 79, 135, 136, 155, 157, were also referred to.

DRAPER, C. J., delivered the judgment of the court.

The 157th section of the Division Courts act, provides that no clerk or bailiff, or other officer of any division court, shall directly or indirectly purchase any goods or chattels at any sale made by any division court bailiff under execution, and every such purchase shall be absolutely void. If therefore the defendant was through Gallon indirectly the purchaser of the lumber in question at the sale by Hungerford, he acquired no title, and could not hold it against this plaintiff Whether, looking at the whole case, he was not indirectly the purchaser, was not submitted to the jury, the case having been withdrawn from them by the consent of both parties, except as to the question of the value of the lumber, which they found to be $288 Gallon denied that there was any understanding before sale between him and the defendant, though other parts of his testimony are calculated to lead to an opposite conclusion, and if, on considering the whole together, the jury had adopted such conclusion, I am not at present prepared to say it must necessarily have been set aside.

The case seems to be one of cruel hardship for the plaintiff His property to the value, according to the verdict, of $288, has been rightly taken in execution, but it has been removed from his mill-yard into another division of the county, and the mere expense of the removal ($160) absorbs the whole sum for which it was sold. There is positive evidence that the plaintiff forbid its removal, and Hungerford, the bailiff who seized and removed, only asserts the direction of Edwards, an execution creditor, for the removal, adding that the plaintiff said nothing as to moving it, did not object to him. Thus the plaintiff's property, enough to satisfy the debts, amounting to less than $200, (to which of course interest and costs should be added), for which it was seized, has been disposed of, and not a penny of the debts paid, nor even the bailiff's fees on the execution. It may well be asked if the law permits this?

The seizure was warranted under the 151st section of the act, and the 155th section directs how he is to proceed. He shall immediately after seizing, and at least eight days before the time appointed for sale, give public notice by advertisement put up at three of the most public places "in the division where such goods and chattels have been taken, of the time and place *within the division*, when and *where* they will be exposed to sale." As we read the section, it makes no provision for selling goods taken in execution in any division but that in which they were taken, and the facts of this case do not favour a less limited interpretation. We are not, however, as at present advised, prepared to hold a sale made in another division to a *bonâ fide* purchaser void. We incline to think it might be upheld; and that either the plaintiff or defendant in the division court execution who sustained loss or damage by such removal and sale, might recover compensation from the bailiff, assuming of course that they neither directed or assented to the removal

But assuming, as we presume we are bound to do, from the manner in which the parties have agreed the case shall be presented, that Gallon was a *bona fide* purchaser, the defendant could not be made liable for purchasing from him. Lord Ellenborough's dictum, in *McCombie* v. *Davies*, 6 East. 538, would not cover the case, and that dictum has been repeatedly questioned, and the judgment of the court only upheld on the ground mentioned by the other judges, the want of demand and refusal. If Gallon had bought for defendant in fact, though in his own name in form, we think the defendant, being the bailiff of another division court within the same county as that from which the execution issued, would come both within the spirit and the letter of section 157, and that the sale to him being void, if he had the goods in his possession trover would lie with previous demand.

We cannot, however, hold that the plaintiff is entitled to the verdict, without the fact having been found that the defendant was, though indirectly, the purchaser at this sale. Assuming that Gallon purchased for himself, the rule must be made absolute.

Rule absolute.

MASSACHUSETS HOSPITAL v. THE PROVINCIAL INSURANCE COMPANY.

Covenant to pay in N. Y.—Depreciation of Currency.

Defendants in Toronto covenanted to pay $516 in New York on the 20th August, 1858, which they failed to do, and when sued here in 1865, they claimed to pay in American Currency at par, though in the meantime it had become very much depreciated. *Held*, however, that the plaintiffs were entitled to the equivalent of the $516 at New York on the day of payment, with interest.

[Q. B. T. T. 30 Vic., 1866.]

Declaration on a covenant, dated 21st June, 1858, to pay $515 89, sixty days after date, at the Bank of the Republic, New York. Breach, non-payment.

Plea, that on the day when said money was payable defendants provided funds, and had the same to meet this claim at the Bank of the Republic, but said deed was not then there, nor was it presented there on the day it became due, nor were the plaintiffs there to receive it, nor was any claim made on defendants till the 10th of November, 1865; that the money is payable in New York in American currency, and defendants are and have been always ready to pay in