

uncertainty as to how much goods sold by a bailiff will realise. The sale was conducted in a proper manner and due regard was had to the rights of the plaintiff and the duty of the defendant.

There was no excessive distress in respect of the quantity of goods seized nor in respect of those sold. Had a lesser amount of goods been distrained, it might have proved insufficient, whereupon a second distress and sale would have been necessary, and that would have put the plaintiff to further expense. The defendant acted reasonably, and the plaintiff had against the defendant no cause of action which was covered by his statement of claim.

The plaintiff urged that he was entitled at all events to the \$259.59; but he could not recover it in this action without an amendment of the pleadings. That should not be allowed. The plaintiff's goods had been seized by the municipality for taxes; and, if the defendant had not paid the taxes, the goods would have been sold for taxes. The defendant apparently was out of pocket \$1,093.98. It was the duty of the plaintiff to have paid that sum; but, there being no privity of contract between the plaintiff and defendant, the defendant was apparently without a remedy against the plaintiff, although the latter had received the benefit.

The plaintiff's conduct not being creditable, he was not entitled to have the Court exercise its discretion by permitting him to amend his pleadings.

Action dismissed with costs.

MIDDLETON, J.

DECEMBER 15TH, 1916.

BONNICK v. LENNOX.

BONNICK v. WOLFE.

Assignments and Preferences—Assignment for Benefit of Creditors—Money Withdrawn from Business by Insolvent Trader before Assignment—Prosecution of Insolvent by two Creditors for Fraud—Payment to Prosecuting Creditors out of Money Withdrawn of Sums Sufficient with Dividend from Insolvent's Estate to Pay Claims in Full—Agreement—Intimation to Crown Attorney—Suspended Sentence—Deduction from Dividends of Sums Paid—Costs.

Actions by the assignee for the benefit of the creditors of one Topp to recover sums alleged to have been improperly paid to the defendants, two of the creditors of Topp.