cover or extenuate his own omission, he must take the consequences. We say omission, from the fact that it was not put on the footing he now puts it in the first instance, because he seems to have been impressed with the necessity of serving the issue-book before the trial; for he did serve it, though too late.

The rule will therefore be made absolute, and with costs.

Rule absolute with costs.

Davidson et al v. Reynolds et al.

Exemption Act (23 Vic. c. 25 s. 4, sub-sec. 6)—Horse ordinarily used in debtor's occupation.

A horse ordinarily used in the debtor's occupation, not exceeding in value $60, is a "chattel" within the meaning of the Exemption Act, 23 Vic. cap. 25, sec. 4, sub-sec. 6, and is therefore not liable to seizure for debt.

[C.P., M.T., 1866].

This was an action against the defendant Reynolds, sheriff of the county of Ontario, and his sureties, on their covenant under the statute.

Two breaches were assigned; 1st. That on an execution sued out of the County Court against the goods and chattels of Donald McMillan *et al.*, endorsed to levy $144 72 damages, and $26 for costs and writs, delivered to him in December, 1864, when they had goods, &c., out of which he might have made the money, he did not nor would not levy the money, but made default; 2nd. That on the same writ he did levy the money, but falsely returned that he had levied $5 91, and that the defendants had no more goods and chattels, whereof he could levy the residue or any part thereof.

The cause was tried at the last assizes for the city of Toronto.

The plaintiff's proved that, among other things, the sheriff's bailiff had seized a pair of horses, harness and sleigh, which the defendants in the execution had been using on their farm; that the bailiff had allowed McMillan to drive away the horses on the pretence of finding security, and that he had sold them: the sheriff was unable to produce them. The other goods and chattels brought enough to pay the sheriff's charges and leave $5 91 over.

There were two points in dispute at the trial; 1st. Whether McMillan took the horses away by leave of the plaintiffs or sheriff's bailiff; and, 2nd. Whether one of the horses could not have been selected by the debtors as exempt from seizure, its value with the harness and sleigh not exceeding $60.

The learned judge being of opinion that it was exempt, directed the jury to say, whether it was by plaintiff's leave or by leave of the sheriff that the horses were taken away, and to find the value of the better horse as the damages of the plaintiffs, and also to find the value of the other horse, sleigh and harness. The jury found that it was with the leave of the sheriff's bailiff the horses were driven away, and they assessed damages for the plaintiffs at $75, the value of the best horse, and the value of the other horse, harness and sleigh at $50.

Mc.Michael had leave reserved to move to increase the damages by $50, if the court were of opinion that the horse, not exceeding in value, $60, was not exempt from seizure.

In Michaelmas term a rule *nisi* was accordingly obtained to shew cause why the verdict should not be increased by adding $50 pursuant to leave, on the ground that the articles so valued by the jury were not exempt under the statute.

During the term *Robt. A. Harrison* shewed cause, and contended that a horse was such a chattel as might be exempt from seizure, if ordinarily used in the debtor's occupation, as the evidence fairly shewed this was.

Mc.Michael contended that animals are not within the exemption of the sixth sub-section of the fourth clause of the statute.

J. Wilson, J., delivered the judgment of the court.

We are called upon to determine whether this horse was exempt from seizure by the 6th sub-section of section 4 of the 23 Vic. cap. 25. The words are, "Tools and implements of, or chattels ordinarily used in the debtor's occupation to the value of sixty dollars."

We take the word "tool" to mean an instrument of manual operation, particularly those used by farmers and mechanics. We think the word "implement" has a more extensive meaning, including, with tools, utensils of domestic use, instruments of trade and husbandry; but both words, we think, exclude the idea of animals. The word "chattel" has a legal, well-defined meaning, and is more comprehensive than the other two, and includes animals as well as goods movable and immovable, except such as have the nature of freehold. "Chattels personal are horses and other beasts, household stuff," &c.: Co. Lit. 118 b.; Off. Ex. 79, 81.

A horse, ordinarily used in a debtor's occupation, of the value of $60 or under, could properly, we think, have been selected by him out of any larger number as exempt from seizure under this sub-section. The jury have found that the horse, sleigh and harness were of the value of $50, and in regard to amount were within the exemption.

We are of opinion that a horse, ordinarily used in a debtor's occupation, of the value of $60 or less, as this horse was, is a chattel which he might select out of a larger number seized as exempt under this clause of the statute.

The debtor has taken the horse, and so we think he may be held to have selected it, as he had the right to do.

The rule will be discharged.

Rule discharged.

COMMON LAW CHAMBERS.

(*Reported by* Robert A. Harrison, Esq., *Barrister-at-Law.*)

Bank of British North America v. Laughrey et al.

Garnishee proceedings—Service of order in case of foreign insurance companies—Sufficiency of affidavit—C. L. P. A. sec. 288—Stat. 23 Vic., cap. 33.

Held 1. That a debt due by a corporation having its head office in England, cannot be attached by service of the attaching order upon an agent of the corporation in Upper Canada.