

neither the reeve, nor any member of the council, nor any municipal elector presided at the meeting for the purpose of receiving votes. 3. That the poll was closed at three p. m., before all the electors had polled their votes.

In this term *S. Richards Q. C.* shewed cause.

The case turned entirely upon the affidavits filed on both sides, the contents of which are sufficiently stated in the judgment of the court, delivered by

HAGARTY, J. —We think the first and third objections are completely answered by the affidavits filed, both as to the giving the notices and as to the closing the poll.

The second, as to the reeve not presiding, has produced a large amount of testimony not completely reconcilable.

The witnesses for the relator swear that when they voted the reeve was not there. The witness McKay says, that from half past ten to half past twelve he was engaged in business with the reeve "at some distance from the place where the poll was held." This statement may have several meanings, and it might be very difficult to assign a definite meaning, on which perjury could be charged. If the reeve had noticed and explained this statement, there would have been nothing to argue. His omission so to do is the only point in the case requiring much consideration. If his affidavit stood alone in answer, we might be inclined not to accept it as sufficient. But the evidence is overwhelming, that he duly opened and closed the poll, and a number of witnesses swear that, "except for a short time on two or three occasions, when he was necessarily out of the room," he presided in the usual manner. It may be probable that the relator's witnesses when voting may have come in on these two or three occasions, and so not have seen him.

We must not too rigidly construe the statute, that the reeve, &c. shall preside. In the case made out for the defendants, we can not say that the clause in the act was not substantially complied with. An overstrictness of construction would open the door to innumerable objections of a technical character to almost every township meeting held by the ratepayers, who, generally without legal advice, are obliged to perform the many duties and go through the many forms prescribed by the municipal act.

There seems no reason to suspect that there was any unfairness in the conduct of the voting, and we think, on the whole evidence before us, we must discharge the rule.

Rule discharged.

#### CAMPBELL V. COULTHARD.

*C. S. U. C. ch. 19, secs. 151, 157.—Division Court—Sale under execution.*

Executions for about \$200, issued against the plaintiff from the first division court of the county, under which lumber was seized at his mill, within that division. A sale was attempted there without success, and by direction of one of the execution creditors the bailiff had the lumber removed to the county town thirty miles off. In the fifth division, which cost \$160. It was there bought by G., the deputy sheriff, for \$160, and the defendant purchased from him. The plaintiff having brought trover, the jury were asked only to find the value of the lumber, which they assessed at \$28, and a verdict was entered for that sum.

Upon motion on leave reserved, a nonsuit was ordered for though section 151 provides only for sale in the division where the goods have been seized, yet a sale in another

division to a *bona fide* purchaser would pass the property, leaving the party injured to recover compensation from the bailiff: that G. must be assumed on the finding to be such a purchaser, and defendant could not be made liable for purchasing from him.

*Quære*, whether on the evidence, stated below, the jury might not have found that G. was in fact purchasing for defendant, who was a division court bailiff; and, if so, under section 157, the sale would have been void.

Remarks upon the hardship of the case upon the plaintiff.

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

Trover, for 66,792 feet of sawed lumber.

Pleas —1. Not guilty. 2. Not plaintiff's property. 3. Leave and license.

The case was tried at Lindsay, in April last, before *Hagarty, J.*

It appeared the plaintiff had a saw-mill in the township of Eldon, and that three precepts or executions were delivered to one Hungerford, bailiff of the first division court, against the plaintiff's goods. The saw-mill was within the limits of the first division court, and the judgments were recovered there. One Edwards was the plaintiff on two writs, the joint amount of which was \$122 06. The defendant was the plaintiff in the other, which directed the levy of \$75 11. All three came to the bailiff's hands at one time. He seized a quantity of sawed lumber, not less than 64,000 feet, in June, 1865, and advertised a sale at the plaintiff's mill, but could not get a bid, and adjourned the sale, and at a subsequent day tried again, but no one bid.

Then Edwards directed that the lumber should be removed to Lindsay, which was in the fifth division, and about thirty miles from the plaintiff's mill, and Hungerford employed a man to remove it, whose charge was \$160, and who was paid \$80 on account. There Hungerford sold it for \$160. The defendant was at the sale; only a few persons were present; and one James Gallon bought it, and he paid the \$80 for hauling it, which money he received from the defendant. Gallon was called, and swore that the defendant had nothing to do with his making the purchase, that he bought on speculation; only three persons were there. After the sale the defendant agreed to go shares with him in the profits, and lent him money to pay for it, and afterwards bought the whole. Gallon gave up the purchase to him for \$10. The defendant at that time was a division court bailiff in that county, and Gallon was a deputy sheriff. A witness for plaintiff swore that he went to the plaintiff's mill yard to attend the bailiff's sale, and was willing to have given \$4 per thousand for the lumber. It was sworn it was worth \$5 or \$6 per thousand at the mill.

Hungerford swore that Edwards, one of the execution creditors, directed the removal of the lumber to Lindsay, and that the plaintiff said nothing as to moving it, but the man who drew it away swore that the plaintiff forbid him and Hungerford from taking it away; that he objected several times, and said it ought to be sold on the place.

It was insisted for the plaintiff that the lumber could not be sold out of the division where it was seized; that the defendant could not buy at a division court sale; and that the sale was at so low a price as to afford evidence of a fraudulent and void sale.

For the defence, it was objected that the sale to Gallon passed the property, and that neither