

monies can certainly be levied without a sale. It appears to me that these monies are levied in the sense of the law, otherwise any insolvent debtor could prefer one creditor to another by simply paying the bailiff, on a previous understanding with him to that effect. This was not even a voluntary payment by the debtor. It was money furnished by the creditors of an insolvent. The only question would seem to be: if that is the case, who is to get it? Is it to go, all of it, to the plaintiff? By what right, if the money is before the court, and if there are oppositions, and if the insolvency is there?

I shall maintain this opposition and dismiss the contestation. The only difficulty, a technical one, which I have felt in this matter has been that these monies were never seized or taken in execution at all. In that respect the case differs from the one where money may have been seized and returned into court under article 564 C.P.; but that can make no difference here, because whether they were seized or not, or whether the bailiff would have been bound to seize them if he had found them there on the table, they are returned before the court. Whether he could have refused to take the money or not is a point not raised. All we have to do with is the money actually before the court. Whether levied, or merely paid by an insolvent can make no difference to the rights of the creditors now that the money is here; and it can make no difference to the plaintiff if it is the money of a debtor *en déconfiture*.

Archambault & Co. for plaintiff.

Geoffrion & Co. for defendant.

CIRCUIT COURT.

RICHMOND, May, 1884.

Before Brooks, J.

Cooke et al. v. Penfold.

*Solicitor—Professional advice—Opinion given
"en voyage."*

*A solicitor may recover for consultation and
advice given outside of his office.*

The plaintiffs brought the present action for \$3 for professional services rendered (consultation and advice). The defendant, who

combines the callings of Insurance Agent and Assignee, pleaded a general denial.

The defendant when examined in Court admitted the advice, that it was given in answer to questions asked by him, and he did not dispute the charge for the services rendered, but rested his defence on the contention that the consultation in question having taken place in the course of a casual conversation on board of a railroad car on which he and one of the plaintiffs were passengers, there was no right of action. It was elicited that the defendant was at the time actually on his way to Montreal to obtain advice on the point concerning which he consulted the plaintiff.

The Court in rendering judgment suggested that under the circumstances, as the defendant had not expected to be charged, the plaintiff should waive costs, which was done, and judgment was rendered for the amount of the action accordingly.

Judgment for plaintiff.

C. J. Brooke, for plaintiffs.

Hon. Hy. Aylmer, for defendant.

GENERAL NOTES.

The first and second numbers of the *American Law Journal* have been issued at Columbus, Ohio. These issues promise well. In the first number there is a treatise on Master and Servant, by James M. Kerr. In the second issue Dr. Wharton has an article on the reputation of the deceased in Homicide cases. We welcome our new contemporary to the ranks of legal journalism.

Referring to the Cincinnati riots, the writer in the *Century*, from whom we have already quoted, says, in the June number:—"Out of seventy-one prosecutions for murder and manslaughter in the courts of Hamilton county during the two years ending June 30, 1883, four resulted in acquittal, two in quashed indictments, six in imprisonment, and fifty-nine were still pending. Of such a paralysis of justice the logical results are, first a carnival of crime, and then anarchy. No wonder that the trade of burking had sprung up in Cincinnati, and still less wonder that a desperate populace trampled under foot the laws that had no longer any claim on their respect. If Cincinnati had convicted and punished half, even, of the homicides prosecuted in her courts during the last two years, this riot would never have happened, a fearful loss of property and of life would have been averted, and she would have escaped a blot upon her good name."