

## SALE OF GOODS—Continued.

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and tender it to him. *Held*, 1. That if the contract was for the sale of a chattel, the charge was right; but if for work and labor, that it was wrong. 2. That although the circumstances might tend to support the view that the contract was for work and labor, yet that the plaintiff having, without the defendant's sanction, pulled down and carried away the building, he could not be heard to say that it was not a sale of a chattel the property in which had not passed to the defendant. *Ross v. Doyle*.

SECURITY FOR COSTS.—*Delay*.—After defendant had obtained a postponement of the trial, and had applied for and been refused a further postponement, he applied for security for costs, alleging that he had only learned a few days before moving of the fact of the plaintiff's absence. *Held*, That the application was not too late. *Carruthers v. Waterous* . . . . . 434

—*Præcipe order*.—The Clerk of Records and Writs has power to issue, upon *præcipe*, an order for security for costs, where from the bill the plaintiff's residence appears to be without the jurisdiction. *Baynes v. Metcalf*. . . . . 85

—*Sufficiency*.—*Onus as to*.—*Power of master on reference*.—*Extension of time*.—An order was made directing security to be given, within a certain time, to the satisfaction of the master. Plaintiff brought in a bond with one surety who justified in \$400 over his just debts, but said nothing about exemptions. The defendant filed an affidavit impeaching the surety's solvency. The master disallowed the bond. *Held*, 1. That the master had acted properly. 2. That further time should not be given unless upon material sufficiently explaining the delay, etc. *Osborne v. Inkster, &c.* . . . . . 399

SPECIFIC PERFORMANCE.—*Deficiency in land*.—*Part taken by Railway*.—*Sub-purchasers*.—*Parties*.—On 30th January, 1882, plaintiff agreed to sell lot 33, described as 128 acres, to defendant L. Shortly afterwards defendant L. agreed to sell the same land described as 111 acres, to another defendant, who agreed to sell it to other defendants. There were, in reality, about 112½ acres in the lot, and of this 1½ acres were owned by a railway company and used for their track. The agreements were made during a period of great excitement in real estate. After its abatement neither party took any steps to carry out the agreement, beyond the rendering of an account by the plaintiff to the defendant and a letter threatening proceedings in 1885, and beyond an enquiry by the defendant L. as to the state of the title in 1883. *Held*, 1. That, under the circumstances, specific performance ought not to be decreed against L. 2. That the proper decree against the sub-purchasers (who had not answered) was to direct a reference to the master to enquire as to title; in the event of his finding a good title, to take an account of the amount due for purchase money and to fix a day for payment; on payment, plaintiff to convey; on default,

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