plevin to put his objection in a formal manner on the record. In that case Callis is cited, p. 200, where he says, "If upon a judgment given in the King's Court, or upon a decree made in the court of sewers, a writ or warrant of *distringas ad reparationem* or of that nature be awarded, and the party's goods be thereby taken, these goods ought not to be delivered to be taken either out of this court or out of any other court of the King, *because it is an execution out of a judgment*," and it is said there, citing another passage of Callis, p. 197, that there is a distinction between those goods that remain in the custody of the officer under the seizure and those that afterwards come into the hands of a purchaser, saying that the former are not repleviable; however, the court refused to quash the proceedings, leaving the defendant to raise his defence upon the record, although the goods were replevied out of the hands of the officer acting under the decree and warrant of the court of sewers.

Thus, then, the law stood in England, that for any wrongful taking a replevin lay except where the taking was in execution under a judgment of a superior court, or of an inferior tribunal whose judgment was by statute made final and conclusive, to which may be added the further exception where the taking was in order to a condemnation under the revenue laws: *Cawthorne* v. *Camp*, 1 Anst. 212, or for a duty due to the crown: *Rex* v. *Oliver*, Bun. 14, and the reason of the law that goods taken in execution could not be replevied was that it could not be endured that the cause of justice should be frustrated by permitting the party, *upon whom the money was to be levied*, in satisfaction of a judgment of a superior court, or of a judgment or conviction made final by a statute, *to fetch back* the goods by replevin, and so delay the plaintiff in his recovery of the fruits of his judgment. The reason then given for the courts in England holding it to be a contempt of court for a party to proceed, and consequently for their not permitting him to proceed by replevin, in respect of a seizure under an execution issued out of a superior court, applies only to the case of a replevin brought or attempted to be brought by him against whom the execution issued. While adopting the same principle, there have been, in the supreme court of the State of New York, several cases of replevin being maintained even against a sheriff in respect of goods taken in execution.

In *Clark* v. *Skinner*, 20 Johnson, 465, it was held that replevin lies at the suit of the owner of a chattel against a sheriff, constable, or other officer who has taken it from the owner's servant or agent while employed in the owner's business, by virtue of an execution against such servant or agent, the actual possession of the property in such case being considered as remaining in the owner, and not in the defendant in the execution. Platt, J., giving judgment says, "Suppose John Clark (against whom the execution was and from whom the goods were taken) had taken the horse and sleigh as a trespasser himself, would they be *in the custody of the law* as to the true owner, *because the constable happened to find them in the hands of a person against whom he had an execution?* If I leave my watch to be repaired, or my horse to be shod, and it be taken on a *fi. fa.* against the watchmaker or blacksmith, shall I not have replevin? If the owner put his goods on board a vessel to be transported, shall he not have this remedy, if they are taken on execution, against the master of the vessel? It seems to me indispensable for the due protection of personal property. In many cases it would be mockery to say to the owner—Bring an action of trespass or trover against the man who has despoiled you. Insolvency would be both a sword and a shield for trespassers. Besides, there are many cases where the possession of chattels is of more value to the owner than the estimated value in money, and the action of detinue is so slow and uncertain, as a specific remedy, that it has become nearly obsolete." "The rule," he proceeds, "I believe is without exception, that wherever trespass will lie the injured party may maintain replevin. Baron Comyns says, 'Replevin lies of all goods and chattels unlawfully taken,' (6 Com. Dig. Replevin A) 'Though,' he says, (Replevin D) 'replevin does not lie for goods taken in execution. This last proposition,' he adds, 'is certainly not true without important qualifications. *It is untrue as to goods taken in execution where the fi. fa. is against A. and the goods are taken from the possession of B*, (being the property of the latter, is plainly intended). "By goods," he proceeds, "*taken in execution*, I understand goods *rightfully taken in obedience to the writ*, but if, through design or mistake, the officer takes goods which are not the property of the defendant in the execution, he is a trespasser, and such goods never were *taken in execution*, in the true sense of the rule laid down by Baron Comyns."

In *Thompson* v. *Button*, 14 Johnson, 84, it is laid down that goods taken in execution by a sheriff out of the possession of the defendant in the execution, being in the custody of the law, cannot be replevied, *but if the officer having an execution against A. undertakes to execute it on goods in the possession of B., the latter may bring replevin for them*. The chief justice in giving judgment says, "As a general principle, it is undoubtedly true that goods taken in execution are in the custody of the law, and it would be repugnant to sound principles to permit them to be taken out of such custody, *when the officer has found them in and taken them out of the possession of the defendant in the execution.*" This judgment is in precise accord with the law of England, as I understand it.

In *Hall* v. *Tuttle*, 2 Wend. 476, the law is laid down in precisely the same language. The court, in giving judgment, adds, "The sheriff levies at his peril, if the property does not belong to the defendant in the execution."

In *Dunham* v. *Wyckoff*, 3 Wend. 279, the case came up on demurrer, which admitted that the property in the goods seized under execution was in the plaintiff in replevin, although when seized they were in the possession of the person against whom the judgment and execution was had. Judgment was given for the plaintiff on the demurrer, as the pleadings admitted the property to be his. A similar point was decided on error in *Acker* v. *Campbell*, 33 Wend. 372.

The principle upon which these cases proceed seems to be in accord with that stated by Chief Baron Gilbert as the principle upon which the