The case of *Childers* v. *Wooler*, 2 E. & E. 286, is not, I think, in point, nor does it, as was argued here, at all shake the case of *Jarmain* v. *Hooper*.

The evidence given by Mr. J. B. McMahon was that his firm were employed in collecting claims for the defendants, and he presumed they were instructed to collect this debt. This was one of the questions left to the jury, and they would be justified on this evidence in finding that Mr. McMahon was so instructed. Then if instructed to collect the debt, the above decisions satisfy me that this was a sufficient authority from the defendants for them to issue the execution, and their acts after the execution was issued would be done as agents for the defendants. I think, therefore, that the defendants' rule fails as to the first and third grounds stated therein (*a*).

The second objection raised is that there was no ratification by the defendants or their attorneys of the seizure made by the sheriff. If the defendants or their attorneys did not authorize the sheriff to make the seizure, no subsequent ratification by them of this act would, I think, make them liable. See *Wilson* v. *Tumman*, 6 M. & G. 243, *Woollen* v. *Wright*, 1 H. & C. 534, and *Kennedy* v. *Patterson*, 22 U. C. Q. B. 556. But in the present case there was evidence in my opinion to go to the jury that the attorneys for the defendants directed the seizure to be made; and it must be remembered that this was a motion to enter a nonsuit, and if there is evidence to sustain the verdict the rule must be discharged, although the verdict might be against the weight of evidence. The deputy sheriff, C. E. Smith, who had the writ to execute, in his evidence stated as follows:—"I saw one of the Mr. McMahons at the sheriff's request, who had referred me to him for instructions (this subsequently appeared to have been Mr. H. McMahon). He told me the defendant William Beare had a fruit store in Paris. I said it would be a good time (near Christmas) to make a haul; he said, it would." The deputy sheriff then went up the same day, and levied on the goods in the fruit store, for which this action is brought. In my opinion this was evidence to go to the jury that the attorney directed these goods to be seized.

From this judgement the defendants appealed.

Moss, for the appellant, cited *Jarmain* v. *Hooper*, 6 M. & G. 827; *Sowell* v. *Champion*, 6 A. & E. 407; *Rowles* v. *Senior*, 8 Q. B. 677; *Collett* v. *Foster*, 2 H. & N. 356; *Childers* v. *Wooler*, 2 E. & E. 307, 313, 314; *Cronshaw* v. *Chayman*, 7 H. & N. 911; *Williams* v. *Smith*, 14 C. B. N. S. 596; *Kennedy* v. *Patterson*, 22 U. C. Q. B. 556; *Sweetnam* v. *Lemon et al.*, 13 U. C. C. P. 541; *Whitmore* v. *Green*, 13 M. & W. 109; *Woollen* v. *Wright*, 1 H. & C. 554.

Fitch contra, cited *Barker* v. *St. Quintin*, 12 M. & W. 441; *Wilson* v. *Tumman*, 6 M. & G. 241; *Radenhurst* v. *McLean*, 4 U. C. O. S. 281; *Cameron* v. *Lount*, 4 U. C. Q. B. 275; *Grant* v. *Wilson*, 17 U. C. Q. B. 148; *Gray* v. *Fortune et al.*, 18 U. C. Q. B. 253; *Walker* v. *Hunter*, 2 C. B. 323; *Tilt* v. *Jarvis*, 5 U. C. C. P. 486.

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

It is unnecessary to discuss any view of the law not expressly arising on this motion. Unless the judge should have nonsuited, the appeal fails.

It seems to us that the learned judge decided correctly, and that he was bound to leave the case to the jury, and we are satisfied with his reasons in his carefully prepared judgment.

Some points urged by Mr. Moss and naturally suggested by the cases cited, were not raised below; for example, whether any subsequent ratification of a wrongful act of this kind is available. We are also not called on to decide a point noticed in *Childers* v. *Wooler*, 2 E & E. 316, as to the liability ceasing from the time that the sheriff became aware that he was acting illegally. We only mention these to remark that the form of appeal does not render their decision necessary.

It was proved that this plaintiff, Slaght, had rented the shop, in which fruit was sold, and the suit is for breaking and entering and selling the goods. Beare swore he was there merely as the plaintiff's agent. If the jury believed that the attorneys instructed the sheriff, as was sworn, that Beare kept a fruit store in Paris, and that it would be a good time to make a haul, that, coupled with the other evidence, seems necessarily proper to submit to a jury on the question whether the defendants through their attorneys joined in or caused the trespass on the shop, where, in our view of the evidence, the plaintiff, and not Beare, kept a fruit store, &c. *Kennedy* v. *Patterson*, in this court, 22 U. C. Q. B. 563, is in point.

There is a wide distinction between this and one or two of the cases cited by Mr. Moss, where the sherif sued the attorney for an alleged false representation or direction as to the ownership of goods, on which the sheriff acted, and had to pay damages to the true owner.

The case of *Walker* v. *Olding* (1 H. & C. 621, 9 Jur. N. S. 55, in 1862), seems to assume the execution plaintiffs' liability in trespass on a direction given by their attorney. That defendants are answerable for the acts of their attorneys in the ordinary enforcement of execution process and directions as to action thereon, seems to be reasonably clear. See *Jarmain* v. *Hooper*, 6 M. & G. 827, where the law is reviewed by *Tindal*, C. J.

At present we are not prepared to say that there was no evidence proper to be submitted to the jury, and therefore we dismiss the appeal with costs.

Appeal dismissed, with costs.

(*a*) These grounds were, that the evidence did not connect defendants with the seizure, and that there was no evidence of authority from defendants to their attorney to issue the *fi. fa.*

DONNELLY ET AL. V. STEWART.

Held,—affirming the judgment of the County Court, and following *McPherson* v. *Forrester*, 11 U. C. Q. B. 362—that an action would not lie in a County Court upon a Division Court judgment.

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

APPEAL from the County Court of the County of Hastings.

This was an action brought on a judgment recovered in the ninth Division Court of the County of Hastings.

At the trial it was objected that the action would not lie, and upon this objection the learned judge made a rule absolute in term to enter a nonsuit, holding the case to be governed by *McPherson* v. *Forrester*, 11 U. C. Q. B. 362.

The plaintiff thereupon appealed.