

*Held*, also, that the defendant be restrained from bringing any action against the plaintiff for his arrest.

*Per* HODGSON, J., that the order for arrest should be set aside with costs. That the case should be considered in the light of all the facts and that *Maxwell v. Ferrie*, 8 U.C.C.P. 11, should not be followed.

*Peters*, Atty.-Gen., and *H. C. McDonald*, for plaintiff.

*W. S. Stewart*, Q.C., *D. C. McLeod*, and *J. J. Johnston*, for defendant.

HODGSON, J. }  
In Chambers. }

PATTERSON *v.* MCLEAN.

*One-third costs.*

Sec. 317 of C. L. P. Act, 1873, enacts "Where any action shall be brought in the Supreme Court, where the plaintiff's demand for which such action is brought shall not exceed \$65, then the plaintiff, or the defendant, as the case may be, shall only have taxed and allowed him one-third of the costs to which he would have been allowed and entitled if the claim for which the plaintiff had brought such action had exceeded \$65."

The plaintiff sued upon three promissory notes,

The 1st with interest amounting to \$40.90.

" 2nd " " " 38.70.

" 3rd " " " 36.58.

Each note was declared on in a separate count. At the trial, judgment was entered for the defendant on the first and second counts, and for the plaintiff on the third, for \$36.58.

The plaintiffs claim only one-third costs, but the defendant insists on his right to full costs.

*Held*, that the defendant is entitled to full costs of the issues found in his avow, and which are directed to be deducted from the plaintiff's taxed costs.

*D. A. McKinnon* for plaintiff.

*Peters*, Q.C., for defendant.

FITZGERALD J. }  
In Chambers. }

MCLEOD *v.* JOY.

*Interpleader—Fi. fa.—Goods taken out of Sheriff's bailiwick.*

On June 15th, *fi. fa.*'s were issued against defendant, and placed in the hands of the Sheriff. Defendant at that time was the owner of certain chattels which were then in Sheriff's bailiwick. These were afterwards shipped out of the bailiwick, and there sold by the defendant, who received part of the purchase money on account. At the time of the sale, the purchaser knew nothing of the execution against the defendant. The goods were afterwards brought back into the Sheriff's bailiwick, and were then seized under the execution of June 15th. The purchaser claimed the goods, and the Sheriff interpleaded.

*Held*, that the sale of these goods to a *bona fide* purchaser did not affect the plaintiff's right to seize them under his execution.

*Morson*, Q.C., for plaintiff.

*H. James Palmer*, for the purchaser.

*Stewart*, Q.C., for Sheriff.