

DAVID PETTINGILL *versus* SAMUEL C. BARTLETT.

A. and B. owned a quantity of hay, as tenants in common; C. having an execution against A. caused the whole of the hay to be taken and sold by the sheriff, as A.'s property, to satisfy the execution. It was held, that an action of trespass could not be maintained by B. against C. for selling the whole of the hay.

THIS was an action of trespass, for taking and carrying away seventeen tons of hay, belonging to the plaintiff. The cause was tried in this county at the last April term, when it appeared in evidence that the defendant, having an execution in his own favour against one *J. S. Stone*, who owned one undivided half of the hay mentioned in the writ as tenant in common with the plaintiff, caused the whole of the hay to be seized and sold upon the execution; and the question was, whether this made him liable to the plaintiff in trespass. A verdict was taken, by consent, for the defendant, subject to the opinion of the court upon that question, and the cause continued for advisement.

E. Webster and *Noyes*, for the plaintiff.

Fletcher, for the defendant.

Per curiam. When a debtor owns goods jointly, or as tenant in common with another, the sheriff may seize the whole upon execution; but he should sell only the undivided share of the debtor. In that case the purchaser of the debtor's share becomes tenant in common with the other owner or owners. 1 *Salkeld* 392, *Heydon vs. Heydon*.—2 *L. Raymond* 871.—*Comb.* 217.—*Douglas* 650, *Eddie vs. Davidson*.—*Cowper* 449, *Fox vs. Hanbury*.—1 *East* 367, *Smith & al. vs. Stokes*.—3 *Bos. & Pul.* 288, 289.

If the sheriff in such case undertakes to sell the whole, nothing but the interest of the debtor will pass; and the purchaser will, in that case, also become a tenant in common with the other owners; and as the sheriff has a right to seize the whole, and deliver the whole to the purchaser of the debtor's share, it is immaterial to the other owner, whether he sells the whole or only the debtor's interest. A sale of

Pettingill
vs.
Bartlett.



the whole is not a trespass. *Co. Lit.* 200.—1 *Chit. Pl.* 170.
—4 *East* 128. And neither the sheriff nor the creditor is
liable in an action of trespass.

*Judgment must be entered on the verdict.**

* It was afterwards agreed by the parties, that judgment should be entered
for the plaintiff for the value of his share in the hay, without costs.

1	88
69	89

ABIJAH WHEELER *versus* DAVID PATTERSON.

An action on the case will not lie against the moderator of a town meeting, for
refusing to receive the vote of a person legally qualified to vote, without
shewing malice express or implied.

CASE against the defendant, for illegally and maliciously
rejecting the plaintiff's vote for governor of this state, at a
town meeting in *Temple*, March 12, 1816, the defendant
being moderator of the meeting, and the plaintiff legally en-
titled to vote.

The cause was tried in this county at the last April term,
upon the general issue, when it was satisfactorily proved
that the plaintiff was legally entitled to vote for governor,
and that his vote had been refused by the defendant, who
was moderator of the meeting, as alleged in the declaration;
but the court directed the jury, that they ought not to find
a verdict for the plaintiff, unless they believed that the de-
fendant had refused the vote maliciously, and from improper
motives; and under this direction the jury returned a ver-
dict for the defendant.

The plaintiff moved the court to grant a new trial, on the
ground of a misdirection in thus instructing the jury, and
the cause was continued to this term for advisement.

J. Wilson, for the plaintiff.

Atherton and *J. Smith*, for the defendant.

The opinion of the court* was delivered by

* *WOODBURY, J.*, having been of counsel, did not sit.