

Goods taken upon execution may be sold in four days, if the debt be not paid. It would, therefore, seem that four days may be considered as a reasonable time, in this state, to keep a distress before sale. A distress ought also to be sold for the best price it will bring. It may be sold at private sale, if the full value can be obtained, unless a different mode is provided by statute: otherwise it should be sold at auction, due notice of the time and place of sale being first given. Whether the present action could have been maintained for any irregularity in the manner of selling, it is unnecessary to decide in this case, because we are of opinion that the defendant, in making an immediate sale of the goods, conducted so illegally as to make himself a trespasser *ab initio*. The plaintiff is, therefore, entitled to judgment. 10 *Johns.* 253, *Sacridier vs. McDonald*.—*Brady* 249. The value of the goods was thirty-five dollars. From that sum the amount *Johnson* had a right to demand ought to be deducted, which was twelve dollars. 6 *Mass. Rep.* 20, *Prescott vs. Wright*.
Judgment for the plaintiff for twenty-three dollars.

Blake
vs.
 Johnson.

CHESHIRE, OCTOBER TERM, 1817.

NATHANIEL A. HAVEN ET AL. *versus* JOHN CRAM.

A constable who had sold part of a lot of land, for taxes, described it in his deed as follows: "A certain tract of land, part of lot No. 300, containing two hundred and fifty acres." The deed was held to be void, for uncertainty.

THIS was a writ of entry, in which the plaintiffs demanded seizin of a tract of land in *Unity*, and counted upon their own seizin and a disseizin by the tenant.

The cause was tried upon the general issue, at October term, 1816, in this county. The plaintiffs made out a regular title under *Benning Wentworth*, the original grantee of the land. The defendant set up a title under a sale of the de-

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68	138

Haven & al. ^{vs.} Cram. demanded premises at vendue, for taxes in 1813, by the constable of *Unity*; and the question raised upon the defendant's title was, as to the validity of the constable's deed. The lot taxed, of which the demanded premises were part, contained about four hundred acres, and the description in the constable's deed of the land by him conveyed was as follows: "A certain tract of land, part of lot No. 300, containing two hundred and fifty acres." The plaintiffs contended that the deed was void, for uncertainty; and a verdict was taken for the plaintiffs, subject to the opinion of the court upon the validity of that deed.

J. C. Chamberlain, for the demandants.

G. B. Upham, for the tenant.

Per curiam. The deed of the constable is clearly void, for uncertainty, unless it can be construed to be a grant of two hundred and fifty acres, to be located by the grantee at his election. In a common conveyance from one individual to another, the court would be warranted in putting such a construction upon a deed. *Bac. Ab.*, "Grant" H. 3. Because every deed is to be construed most favorably to the grantee; and, therefore, to give effect to the conveyance, the deed is construed to give an election in such a case to the grantee to locate the land.

But in *England* such a grant by the king would be void. *Bacon's Ab.* "Grant" H. 3. Because the grants of the king are always construed most favorably to him, and against the grantee; and his grants are never construed to ensure to any other intent than what is precisely expressed. 2 *Bl. Com.* 347.

The grants of an officer acting on behalf of the public, and conveying lands not his own, by virtue of a public law, are within the reason of the rule applied in *England* to the king's grants, and ought not to be construed against him; nor ought they to be held to ensure to any intent not precisely expressed. The reason of the rule which is applied to ordinary grants, does not exist in such a case. Should we

in this case construe this deed to give the grantee an election to locate the land, the law would give him during the life of the parties at least to make his election: *Co. Litt. 145*: which would be an inconvenience to the owner of the lot, which the law will not in our opinion tolerate. (1.) We are, therefore, of opinion that the deed of the constable was void, and that judgment must be entered upon the verdict.

Haven & al.
vs.
Cram.

(1) 13 Johnson
525, Jackson vs.
Van Buren; 13
Johnson, 537,
Jackson vs. De-
lany.

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LEMUEL MARTENDALE versus JESSE FOLLET.

In a note for merchantable neat stock, an insertion of the word "young" after "merchantable," is a material alteration. When such alteration was made by the promisee designedly, it destroys the validity of the note. When a note is thus made void by an alteration, the promisee is not at liberty to prove the contract by other evidence.

-THIS was an action of assumpsit. The declaration contained four counts. The first was on a promissory note, alleged to be for seventy dollars, payable in "merchantable young neat stock." The second was on a note of the same date and amount, payable in "merchantable neat stock." The third count was for a yoke of oxen, valued at seventy dollars, sold and delivered; and the fourth on a special promise of the defendant, in consideration of a pair of oxen bought and received of the plaintiff, to pay him seventy dollars in merchantable neat stock. The defendant pleaded the general issue. The cause was tried here at the last term, when the plaintiff offered in evidence a note which purported to be signed by the defendant, for seventy dollars, payable in merchantable young neat stock. The signature of this note was proved to be in *Follet's* hand writing. The defendant then introduced testimony to shew that the word "young" was not originally in the note; but had since been inserted by the plaintiff without the defendant's consent. The plaintiff proposed to waive the two counts on the note, and show that it was given for a pair of oxen valued at seventy dollars, as stated in the third count, under which he considered himself entitled to recover their value; or to