
Moulton v. Stowell.

Whoever abuses an authority derived from the law, thereby becomes a trespasser from the beginning; but it is otherwise where the authority is derived from a party. In such case the action should be trover. 14 Maine 47; 8 Coke 146.

A person assisting an officer in a legal service of a legal process, will not become a trespasser by a subsequent abuse of his authority by the officer. 12 Mass. 506. But if he unite in the abuse, he may be equally liable.

The sale of the remainder of the property in this case, after the process was satisfied, amounted to a conversion of the property sold. 8 Pick. 440; 7 Mass. 123. And as this was done by direction of the defendant, he may be liable for it. Possibly it might be regarded as an abuse which would vitiate the whole proceedings from the beginning.

But the plaintiff can not, after having elected to treat the original taking as the trespass for which he brought his action, where that is justified, give evidence of another and distinct act of wrong or trespass. That is not in avoidance of the evidence offered by the defendant, but is another cause of action, making therefore a new case.

New trial.

MOULTON v. STOWELL & al.

An attachment of an equity in real estate is a lien; and equity will restrain the cutting and removing of wood to the injury of the security.

IN EQUITY. Petition for an injunction, alleging an attachment of an equity of redemption, in a suit against

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Stowell, and that the defendants are cutting off wood, thereby defeating the attachment.

PARKER, C. J. The petitioner by virtue of his attachment has a lien upon the property attached. *Kittredge v. Warren*, 14 N. H. 509; *Kittredge v. Emerson*, 15 N. H. 227.

Whatever would be waste as between mortgager and mortgagee, may be restrained if it impairs the security.

If it is important to the interests of the defendant that the wood be taken off and sold, the injunction may be dissolved on his furnishing security for the demand, or for the proceeds of the sales of the wood. If there is any dispute about the justice of the demand, that may be considered. But if there is none, the defendant is not at liberty to withdraw the value of the security obtained, by removing and selling the wood, as that would defeat the attachment thus far.

Injunction granted.

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If an agent, authorized to make a particular contract, make one in different terms, but of the same legal effect, or differing only in securing to his principal additional benefits, the latter is bound by it.

If a judge in his charge, state to the jury what would be the legal effect of a contract different from the one proved, and there is no reason to suppose the jury to have been misled, or the party in any way prejudiced by the remark, the verdict will not for that cause be set aside.

If one sues for a reward offered for a certain service, and it is set up in the defence, that in performing it he was but the servant of another, he may give in evidence his own acts and declarations, his consultations with others, and the advice given on such occasions, to show that he was acting on his own behalf.