

Rumney
vs.
Allenstown

opinion, two ways only, in which this clause in the statute can be construed. The one is, that the ninety days are to be reckoned from the time the first relief is in fact given to the pauper. This construction we cannot adopt for the reasons before stated. The other construction is, that by "ninety days from the time the first relief shall have been so afforded," was intended ninety days from the time when the first relief, for which the town claims to be reimbursed, was afforded; that the statute, instead of limiting the recovery to ninety days previous to notice given, has limited the time of giving notice to ninety days from the time when the first relief, for which the town claims to be reimbursed, was afforded. With the policy of such a provision we have nothing to do. It is enough that the law seems to us to be so written. We are of opinion, that a notice, to be sufficient, within the intent of the statute, must be served within ninety days from the time when the first relief, for which the town claims to recover, was afforded. As it appears that the notice in this case was not served within ninety days from the time when the first relief, for which the money mentioned in the notice was expended, was afforded, the notice is insufficient, and the defendant must have judgment on the nonsuit.



STRAFFORD, SEPTEMBER TERM, 1822.

PARKER PLUMER vs. AMOS A. BREWSTER.

A deputy sheriff, who has arrested a person upon mesne process, may, in this state, become the bail of such person.

This was an action upon the case for an escape, against the defendant, sheriff of the county of Grafton, and was submitted to the decision of the court, upon a case stated in substance as follows :

The plaintiff having sued out a writ against one *B. Hoit*, delivered the same to *J. Sinclair*, a deputy of the defendant; and *Sinclair*, having arrested *Hoit*, became his bail, and suffered him to go at large.

Plumer
vs.
Brewster.

Emerson, for the plaintiff.

Quincy and *L. B. Walker*, for the defendant.

RICHARDSON, C. J. The question submitted to our decision in this case is, whether a deputy sheriff, who has arrested a person upon mesne process, may lawfully become the bail of the person so arrested?

In England, it is a rule both of the king's bench and the common pleas, that no sheriff's officer be permitted to be bail. 1 *Tidd's Prac.* 230.—2 *Bos. & Pull.* 150, *Faulkner vs. Wise.*—*Doug.* 466, *Hawkins vs. Magnall.*—2 *Str.* 889.—2 *W. Black.* 799, 1180. There is also a similar rule there with respect to attorneys. 1 *Tidd's Prac.* 230.—1 *Bos. & Pull.* 356.—2 *ditto* 49, 564.—2 *East* 181.—2 *Hen. Bl.* 350.—1 *ditto* 76.—*Cowp.* 828.

But in England, if an improper person become bail, the proceeding, although irregular, cannot be treated as a nullity. 2 *East* 181, *The King vs. the Sheriff of Surry.*—1 *Tidd's Prac.* 231.

In this state, we have no rule prohibiting deputy sheriffs from becoming bail; and we are of opinion, that this action cannot be supported.

Judgment for the defendant.



JOSEPH PERKINS vs. WALTER B. KNIGHT.

Where after a cause had been opened to the jury, one of the parties made to a juror out of court statements favorable to his own side of the cause, and the jury afterwards returned a verdict in his favor, a new trial was granted.

TRESPASS for taking a horse, which had been taken by the defendant, a deputy sheriff, upon an execution against one *Ephraim Plumer*, as *Plumer's* property; and the question was, whether the plaintiff had *bona fide* purchased the horse of *Plumer* before the taking by the defendant. The cause was tried here at February term, 1822, and was opened to the jury and part of the evidence laid before them in the forenoon of the day of trial; the court then adjourned, and the cause was finished in the afternoon, and the jury, having returned a verdict for the plaintiff, the defendant moved for