

*Hague* ; 1 D. & E. 557, *Jaques v. Withy* ; 4 Burr. 2482, *Vigers v. Aldrich* ; Yelv. 68, note ; 3 East, 258 ; 1 Johns. 290.

Gould  
v.  
Gould.

And if a creditor assent, that one of two joint debtors, who is in execution, be discharged, it is a satisfaction of the debt with respect to the other debtor. 6 D. & E. 525, *Clark v. Clement*.

This is the necessary consequence of the assent's operating as a release of the debt with respect to the debtor discharged from the execution. For if the debt should not be also held to be discharged with respect to the other debtor, he might be compelled to pay it, and might then legally resort for contribution to the debtor who had been discharged from the execution and thus defeat the legal effect of the discharge.

*Judgment on the verdict.*

### ELEAZER ROBY *versus* JOSHUA MARSH.

When a plaintiff appeals from a judgment of the court of common pleas in a personal action and recovers in this court less than \$50, he is entitled to the costs of the court below, and the defendant to the costs of the appeal.

This was an action on the case commenced at the court of common pleas, where a verdict was taken by consent of the parties for the defendant, and judgment rendered in his favor for \$15,55 costs. From that judgment the plaintiff appealed, and at this term here the jury returned a verdict in favor of the plaintiff and assessed the damages at the sum of thirty dollars.

*Atherton*, for the defendant, moved for leave to enter judgment for the defendant for the cost of the appeal, amounting to \$57,55 and also for his costs in the court below.

*J. U. Parker*, for the plaintiff, contended that the defendant was only entitled to the costs of the appeal, and that the plaintiff was entitled to his costs in the court below amounting to \$17,25.

Roby  
v.  
Marsh.

*By the court.* The statute of 1824, cap. 73, section 4, enacts "that any party aggrieved at any judgment, not rendered on default, of the court of common pleas, in any real action or in any personal action, &c. may appeal therefrom, &c. and where any such appeal shall be made by any plaintiff and he shall not recover more than fifty dollars in the superior court of judicature, he shall not recover any costs on such appeal, but the defendant shall recover his costs and shall have a separate judgment therefor." Were it not for this provision in the statute, the plaintiff would, by law, be entitled to recover his costs both in the court below and upon the appeal, and the only effect of this provision is, to take from the plaintiff the costs of the appeal and give the defendant costs.

The plaintiff must have judgment for his damages and the costs of the court below, and the defendant judgment for his costs here.

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DANIEL PARKER *versus* PETER PATTEE.

A, being in debt, delivered goods to B, one of his creditors to whom he was indebted in a greater sum than the value of the goods with a bill of parcels describing the goods and the prices, and stating that the same were bought by B, and that A had received payment. It was at the same time agreed that the goods should be sold by B and the proceeds applied to the payment of the debt due to B, and if any thing remained, B should account for it with A—it was held that this agreement was a fraud which rendered the sale void with respect to creditors.

This was an action of trespass *de bonis asportatis*. The defendant pleaded in bar, that he, being a deputy sheriff, took the goods as the property of Jonathan Palmer, by virtue of a writ of attachment in favor of Howard & Gordon, against Palmer, and traversed the property of the plaintiff in the goods, and issue was joined on the traverse.

The cause was tried here at April term, 1826, when it appeared in evidence, that Palmer being deeply in debt,