

the true rule. Not only is it essential to the preservation of the rights of all that there shall be an impartial administration of justice, and that those rights shall be determined by tribunals as impartial as the lot of humanity will admit, but it is also of almost if not quite equal importance that every person shall feel that he has had such a trial. That he will not so feel when probable ground exists to believe the contrary, is beyond dispute.

Exception sustained.

FOSTER and BINGHAM, JJ., did not sit.

STATE v. THE PORTLAND & OGDENSBURGH RAILROAD.

An information, in the nature of a *quo warranto*, should be filed and entered at the law term.

The court may transfer, from the trial to the law term, any petition or proceeding erroneously entered at the trial term.

INFORMATION, in the nature of a *quo warranto*, pending at the trial term. The respondent moved to dismiss, for want of jurisdiction. The motion was denied, and the defendants excepted.

The state moved that the case be transferred to the law term. The motion was granted, and the defendants excepted.

Ladd, for the state.

W. & H. Heywood, for the defendants.

STANLEY, J. This court, at the law term, has jurisdiction of, and is vested with power to issue, writs of *quo warranto*. Gen. St., c. 139, s. 1; Laws of 1876, c. 25, s. 3. The writ of *quo warranto* has been superseded in England, and in most of the states of the Union, by the *quo warranto* information, and the objects to be attained by it are identical with those secured by the ancient writ. It lies in all cases where the writ itself could have been maintained. High Ex. Leg. Rem., ss. 591, 600. The legislature must have had in view the long disuse of the writ when the power to issue it was vested in the court at the law term, and could not have intended that the one might be filed at the trial term, and that the other must be entered at the law term.

The motion to transfer was within the discretion of the court, and that discretion was properly exercised. This court, at the law and at the trial terms, although having cognizance of different matters, is

the same court, and it has the power to transfer from one docket to the other any petition or proceeding erroneously entered. *Spaulding's Appeal*, 33 N. H. 479.

Exception overruled.

SAWYER and BINGHAM, JJ., did not sit.

CRAWFORD & a. v. FORRISTALL.

A subsequent vendee of a chattel, with possession, and without notice of a prior sale, has a good title as against a prior vendee with no possession.

TROVER, for a wagon. The defendant, March 12, 1873, bought the wagon of his brother James for \$60, the wagon being two and a half miles away, in an open shed, on a farm formerly owned by the defendant's father. The defendant did not see it that day. Subsequently, on the same day, James offered it to the plaintiffs for \$70, to be endorsed on their note against him; and on the morning of the 13th they rode to where it was, concluded to take it on the terms offered, drew it into the road, but, finding it difficult to draw it home, drew it back, and left it with one Smith to keep and to send to them. The next day the defendant took the wagon and converted it to his own use. The jury found, specially, the value of the wagon to be \$46.66; that the plaintiffs bought and accepted it of James Forristall, March 13, 1873, and received possession of it the same day; that the defendant bought and accepted it March 12, 1873, but did not receive possession of it on that day. Both parties claimed judgment on this verdict.

Aldrich & Shurtleff and Ladd, for the plaintiffs.

Dudley and Ray, Drew & Jordan, for the defendant.

ALLEN, J. The general rule is, that delivery of possession is necessary to the conveyance of a title to personal chattels, as against every one except the vendor; and a subsequent purchaser, with no notice of a prior sale, receiving possession, has a better title than one who has before purchased the same thing with no delivery of possession. 1 Pars. Con. 529; *Ricker v. Cross*, 5 N. H. 570; *Shumway v. Rutter*, 7 Pick. 56; *Jewett v. Warren*, 12 Mass. 300; *Lanfear v. Sumner*, 17 Mass. 110. The purchase of the wagon by the defendant, in this case, unaccompanied by possession, gave him no title against the subsequent purchase by the plaintiffs, who received possession. Admitting the good faith of the parties, and that they stand on equal grounds as to notice of each other's rights, the defendant neglected the very obvious duty of taking possession of the property; and the