

*Rollins*, for the plaintiffs.

*Page*, for the defendant.

ALLEN, J. Pleas in abatement, being dilatory in their nature and effect, and not favored in law, should be framed with accuracy and precision, be certain in substance and intent, and should contain no repugnant matter. Cro. Jac. 82; 1 Ch. Pl. 491; Gould Pl., c. 5, s. 66. The plea, in this case, shows, by the officer's return, that the attachment was made Nov. 25, 1876, and the summons served Dec. 6, 1876, and alleges that the summons delivered to the defendant, when her estate was attached, is the summons enrolled, and the only one served on her. This leaves it uncertain whether the summons enrolled is intended to be identified with the one said by the officer to have been given Dec. 6, or with another one alleged to have been delivered when the goods were attached Nov. 25. Or, if force is given to the averment that it was the only summons served on her, it contradicts the allegation of a summons served at another time, as appears by the officer's return set out in the plea. The plea is bad for uncertainty and repugnancy. *Hibbard v. Clark*, 54 N. H. 521; *Jenkins v. Sherburne* (SMITH, J.), 56 N. H. 21.

*Demurrer sustained.*

DOE, C. J., did not sit.

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GRIFFIN v. BARTLETT.

The sending of a copy of the statutes of the state to the jury for inspection while they are considering the case, without consent of the parties, is error, and cause for setting aside the verdict.

CASE, for flowage, reported in 55 N. H. 119, reviewed by the defendant. The court, in reply to a written message from the jury while they were considering the case, asking if the costs could be limited should they render a verdict of ten dollars for the plaintiff, instructed them that it was their duty to render a verdict without reference to costs, and without considering whether the costs might be affected by their verdict, and sent them a copy of the General Statutes, calling their attention to the chapter on the subject of costs. The jury returned a verdict of ten dollars for the plaintiff, which he moved to set aside and for a new trial because the General Statutes were sent to the jury. At a former trial, the plaintiff had a verdict of one hundred dollars.

*Wiggin* and *Marston*, for the plaintiff.

*Hatch*, for the defendant.

ALLEN, J. The instructions sent by the court to the jury on the subject of costs were correct; but sending a copy of the statutes to the jury, accompanied by a reference to the chapter on costs, was open to the objection that they were thereby enabled to frame their verdict with special reference to limiting the costs, notwithstanding the instructions sent. In actions of review, the law provides a different rule for costs from that in other cases; and, by consulting the law relating to costs generally, they might naturally be misguided by a statute which has no application to this case, and so fail of attaining the object aimed at, even had it been proper, which it was not, for them to consider the law on the subject at all. An inspection of the statutes, on the subject of what the case shows was in their minds, would naturally influence their verdict; and affording them this opportunity, though guarded with proper instructions, was erroneous, and the verdict must, therefore, be set aside, and

*A new trial granted.*

DOE, C. J., did not sit.

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CHESLEY v. COOMBS, and LEAVITT & a., Trs.

A trustee may be chargeable, although he has agreed in writing to pay the money in his hands to the agent of the principal defendant.

The understanding between the principal defendant and his agent, as to the ownership of money in the hands of the trustee, may be a material question in determining the liability of the trustee.

When money is placed in the hands of one of two sureties as security for both, the bailee alone is chargeable as trustee of the principal.

FOREIGN ATTACHMENT. The liability of Leavitt as trustee was tried by a jury, who found him chargeable. The defendant Coombs, being arraigned before a magistrate, March 3, 1876, recognized in \$200, with the trustees as sureties, for his appearance March 7. Leavitt became surety at the request of Mr. Wood, counsel for Coombs, and upon his promise to save him harmless. At or about the same time he received from Wood \$200, and gave him a writing to the effect that the money was received of him as security for the appearance of Coombs, and agreeing to repay the money to Wood if Coombs should not make default. Coombs appeared at the appointed time.

Evidence was received, subject to exception, that Leavitt understood he was receiving the money of Coombs. On the other hand, evidence was introduced that the money was paid to Wood as security for getting bail, and for his services as counsel.