

Hill,  
v.  
Loomis.

*Stewart & Wells*, for the plaintiff.

*Young*, for the defendant.

*By the court.* The rejoinder in this case is defective in substance. It is immaterial where the plaintiff resided. By the laws of this state a man's only cow is exempted from attachment, let him reside where he will.

*Judgment for the defendant.*

*Young*, for the defendant, then contended, that as the cow had gone to pay the plaintiff's debt, that circumstance ought to be considered in assessing the damages. 3 N. H. Rep. 144 ; 6 Mass. Rep. 20.

But the court said, that, although in certain cases, the goods taken having gone to pay the debt of the plaintiff, that circumstance was considered in assessing the damages, yet they thought a different rule ought to be applied in this case. The provision exempting a man's only cow from attachment was intended for the relief of the poor, and ought to be so construed as to give all which the legislature intended ; and the value of the cow, at least, ought in all cases to be given in damages. There will then be no inducement to a creditor to take his debtor's last cow.

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### H. PARSONS *versus* J. N. ALDRICH.

Arbitrators are presumed to have pursued the submission until the contrary appears.

It is necessary to prove the publication of the award only in cases where it has been stipulated in the submission that the award shall be notified to the parties.

A demand is necessary to sustain an action on an award only in cases where the award is to pay money on request.

ASSUMPSIT on an award made under a parol submission.

Parsons  
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Aldrich.

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On the trial of the cause upon the general issue, at September term, 1832, in the court of common pleas, it appeared in evidence, that the parties had certain claims against each other, which had been reduced to writing, and which they agreed to submit to the determination of three arbitrators. The arbitrators met, and having heard the parties, made an award, in writing, that the defendant was indebted to the plaintiff in the sum of \$33,50, "to balance claims, demands and accounts between them, and that Parsons recover \$33,50 balance of accounts, and costs taxed at \$7,09, and arbitrator's fees, \$3." No evidence was offered by the plaintiff to prove that the arbitrators published the award to the parties, or that any demand was made of the defendant to pay the amount of the award before the commencement of the action. A verdict was taken, by consent, for the defendant, subject to the opinion of the court upon the foregoing case, and the cause afterwards transferred to this court for adjudication.

*Young*, for the plaintiff.

*Wells*, for the defendant.

RICHARDSON, C. J. delivered the opinion of the court.

It is said, on behalf of the defendant, that the arbitrators exceeded their authority because they awarded a certain sum to balance claims, demands and accounts between the parties, whereas nothing was submitted except certain claims which had been reduced to writing. But the arbitrators must be presumed to have pursued the submission until the contrary appears, and we must take it for granted that the sum awarded was to balance the claims, demands and accounts submitted; at least, until it is shown that there were other claims, demands and accounts between the parties which were not reduced to writing and submitted.

It is also said that the award was not published. But this is necessary only in cases where it has been stipulated in the submission that the award shall be notified

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to the parties. Caldwell, 195 ; 2 Chitty's Pl. 81 note u.  
It is further contended, that a demand was necessary  
to sustain the action. But it is settled, that a demand is  
necessary only in cases where the award is to pay money  
on request. Caldwell, 197.

### SAMUEL FAIRBANKS *versus* MOSES DOW.

D. agreed, in writing, to sell F. his farm for \$250, to be paid one third yearly  
from the date of the writing, with interest annually—it was held, that no  
action could be maintained against D. for not conveying the land without  
showing that security for the payment of the purchase money had been ten-  
dered to D., and a deed demanded.

ASSUMPSIT on a written contract as follows :—The said  
Dow agrees to sell to said Fairbanks his farm, in Strat-  
ford, for the sum of \$250, to be paid one third yearly  
from this date, with interest annually ; and the said Fair-  
banks agrees to the same. The crops on the farm this  
year to be reserved to the said Dow, and any agreement  
made by J. S., agent for said Dow, to take care and rent  
said farm, to be reserved to said Dow and to be fulfilled.

MOSES DOW,  
SAMUEL FAIRBANKS.

Haverhill, July 31, 1830."

The cause was tried upon the general issue, at May  
term, 1833, when it was not disputed that the defendant  
signed the agreement mentioned in the declaration.

It appeared, that previously to the 31st July, 1830,  
when the said agreement was made, the defendant had  
offered to sell the farm to E. H. Mahurin, for \$300, and  
that Mahurin had addressed a letter to the defendant ac-  
cepting the offer ; and that in the month of August, 1830,  
the defendant made a deed of the farm to Mahurin, and