

## PARKER v. MARVELL.

A vendor's possession, as evidence of a fraudulent sale, *held*, under the circumstances of the case, not to be satisfactorily explained.

REPLEVIN for a wagon. Facts found by a referee. The plaintiff bought the wagon of one Taylor, and paid for it January 23, 1877, but having no place to store it through the winter, he told Taylor that he could use it as he might have occasion if he would allow it to remain in his shed, to which Taylor assented. Sleighing disappeared soon after, and the plaintiff took the wagon and used it several days, during which time he offered it for sale. He then replaced it in Taylor's shed, in whose custody it was allowed to remain, to be used by him as his own, until May 27, 1878, when it was attached by the defendant, a deputy sheriff, as the property of Taylor. The sale was made in good faith, without intent to delay or defraud Taylor's creditors, and understood that the plaintiff had the right at any time to remove it from Taylor's custody and dispose of it as he chose.

Bates, for the

Wadleigh & Co., for the defendant.

BINGHAM, J. The arrangement was a secret transaction, and not an inference of law. *Coburn v. Pickering*, 43 N. H. 130; *Coolidge v. Melville*, 51 N. H. 511; *Stockwell*, 55 N. H. 561; *Cutting v. Jackson*, 56 N. H. 251; *Holmes*, 58 N. H. 293; *Flagg v. Pierce*, 58 N. H. 341. There was no satisfactory explanation of the vendor's possession, as there was in *Towne v. Rice*, 59 N. H. 412, and *French v. Hall*, 59 N. H. 137. The wagon was used by the vendor for more than a year, and from ordinary observation a neighbor or creditor would have supposed it to be the vendor's property.

*Judgment for the plaintiff.*

ALLEN, J., did not sit: the others concurred.

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 KELEHER v. PUTNAM & a.

At common law, a person's insanity justifies his arrest, without legal process, in a case of reasonable necessity.

TRESPASS, for assault and false imprisonment. Plea, the general issue, with a brief statement. The plaintiff kept a small

store in Manchester. Putnam, one of the defendants, was a county commissioner. The evidence tended to show that the plaintiff was afflicted with insane delusions, and disturbed her neighbors and the inmates of the house where she boarded. Physicians examined her, and said she ought to be cared for. Complaint being made to Putnam, he visited her, and, in answer to his inquiries, she informed him she had friends in Lawrence, Mass., and requested to be sent there.

He told her he would send a man with her. For that purpose he employed Reed, the other defendant, who called at the plaintiff's store with a carriage, and told her he had come to take her to Lawrence. She manifested a disposition not to go, and Reed partly pushed and partly carried her into the carriage, which was driven to the depot, where they entered a car and were taken to Lawrence. There he delivered her to the city marshal, whom he informed of the circumstances. The court instructed the jury that if the plaintiff requested Putnam to take her to Lawrence, or if she was dangerous, or disturbing the neighborhood, and if from the motive of placing her in the custody of the marshal she might be properly cared for, and not to rid the public charge, the defendant was not liable, and was not liable. Verdict for the defendant.

for the plaintiff.

*Pliff & O'Connor*, for the defendants.

INGHAM, J. A county commissioner has no power over insane persons by virtue of his office. The right of personal liberty is subject to some exceptions necessary to the welfare of society. At common law a private citizen, without a warrant, may lawfully seize and detain another in certain cases. It is justifiable to hold a man to restrain him from mischief. It is lawful to interfere in an affray which endangers the lives of the combatants. Other instances are enumerated in *Colby v. Jackson*, 12 N. H. 526. Under the right of self-defence it is lawful to seize and restrain any person incapable of controlling his own actions, whose being at large endangers the safety of others. But this is justifiable only when the urgency of the case demands immediate intervention. The right to exercise this summary remedy has its foundation in a reasonable necessity, and ceases with the necessity. A dangerous maniac may be restrained temporarily until he can be safely released, or can be arrested upon legal process, or committed to the asylum under legal authority. But not every insane person is dangerous. Nothing can be more harmless than some of the milder forms of insanity. Nor is it any justification that the defendants were actuated by a desire to promote the plaintiff's welfare. The right of personal liberty is deemed too sacred to be

left to the determination of an irresponsible individual, however conscientious. The law gives these unfortunate persons the safeguards of legal proceedings and the care of responsible guardians. *Davis v. Merrill*, 47 N. H. 208; 22 Monthly Law Rep. 335; 6 South. Law Rev. (N. S.) 568; 3 Am. Law Rev. 193; Ray Insan., ss. 614-619. The legislature has established appropriate forms of proceeding for ascertaining their mental condition, imposing upon them, under the supervision of public functionaries, the restraint necessary to protect them from the imposition of others, and subjecting them to such treatment as may restore their reason. If the plaintiff requested to be taken to Lawrence, she revoked the license by resisting the removal. The instructions given to the jury were erroneous. The question was, whether the plaintiff's removal was reasonably necessary under the circumstances of the case. Cooley Torts 176-179; Addison Torts, c. 12, s. 2.

*Verdict set aside.*

STANLEY, J., did not sit: the others concurred.

SNOW v. LUCIER & Co.

The plaintiff's assent to an arrangement whereby the defendant, in consideration of property received from L., assumed the payment of L.'s debts to the plaintiff, is evidence of the plaintiff's discharge of the defendant as debtor in his stead.

ANDREW BIT, on the common counts for goods sold, and a special count on a novation. The plaintiff's evidence tended to show that the goods were purchased by the defendant Lucier, with whom C., the other defendant, afterwards formed the partnership of Lucier & Co. The firm having become the owners of Lucier's stock in trade, and notes and accounts, undertook to pay his debts, and so informed the plaintiff, who assented to the arrangement. Motion for nonsuit denied, and verdict for the plaintiff.

*French and Burns*, for the defendants.

In order that the plaintiff may maintain his action against the defendants, who are not the original contracting debtor, he must show that the original claim against Lucier was utterly discharged and removed from any possible enforcement against him before this suit was brought as the consideration of the liability set up in this suit, and so discharged at the request of the defendants, made at the time of their assuming the obligation set up in this suit.