

tendance of Mr. Gove, because he was not an attorney within the letter or meaning of the statute, and was not the agent, even, of this plaintiff.

CLARK, J. "If any party, after giving notice to the adverse party as aforesaid, neglects or refuses to take a deposition, such adverse party may recover twenty-five cents a mile for actual travel of himself or his attorney to attend the same, by action on the case, unless seasonably notified in writing, signed by the party giving such notice, that such deposition will not be taken." G. L., c. 229, s. 10.

The penalty is given only when the attendance is by the party or his attorney at law. A recovery may be had for the actual travel of the party himself or his attorney, but there is no provision for a recovery for the travel of an agent who is not an attorney. Section 4 of the same chapter provides that when the adverse party resides out of the state, or more than twenty miles from the place of caption or from the party proposing to take the deposition, notice may be given to his agent or attorney; and section 5 declares that "No person shall be deemed an agent or attorney for this purpose, unless he has indorsed the writ or the summons to be left with the defendant in the cause, or appeared for his principal before the court, justice, referees, or arbitrators, where the action is pending, or given notice in writing that he is such attorney or agent." G. L., c. 229, s. 5. Gove was not the agent or attorney of the party within the terms of this statute, and he was not an attorney at law. If the party had resided out of the state, a notice to Gove of the taking of the deposition would have been insufficient, and a notice to him that the deposition would not be taken would have been equally ineffectual. Gove was not the attorney of the party within the meaning of Gen. Laws, c. 229, s. 10, and there should be

Judgment for the defendant.

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

JERAULDS v. BROWN.

A sale of a quantity of oats to be weighed out of a bin containing a larger quantity, accompanied by payment of the price, does not, before the quantity sold is separated from the bulk, give the vendee title upon which he can maintain trover against the vendor for a conversion of the quantity sold.

TROVER, for 100 bushels of oats. Facts found by a referee. The defendant, having a bin of oats containing more than 200 bushels,

sold 200 bushels of them to the plaintiff, to be weighed out at thirty-two pounds to the bushel. About 100 bushels were weighed out and delivered according to the contract; and it is for failure to deliver the remainder of the 200 bushels on demand that this suit is brought.

The court gave the plaintiff leave to amend by filing a count in assumpsit, and to take judgment thereon for the sum paid for the undelivered oats, with interest, and, in default of such amendment, ordered judgment for the defendant; to which the plaintiff excepted.

W. N. Armington, for the plaintiff.

Drew & Jordan, for the defendant.

BLODGETT, J. The plaintiff has mistaken his remedy. To sustain trover he must prove a general or special property in the oats, and a right to their immediate custody. The facts prove neither of these requisites, but disprove both. They show a breach of contract by the defendant, and nothing else. For this breach he is amenable, and for this only. The exception is overruled, and unless the plaintiff elects to amend, there will be

Judgment for the defendant.

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

LEAVITT v. LOVERING.

When words occur in a statute which can be given no effect consistent with the plain intent of the statute, they must be rejected as without meaning.

A statute providing that all payments made within three months before an assignment by a debtor for the benefit of creditors shall be void, does not apply to payments on contracts existing at the time of its enactment.

ASSUMPSIT, by the plaintiff as assignee of Hicks, under Gen. Laws, c. 140, and Laws of 1885, c. 85.

October 21, 1885, Hicks being indebted to the defendant in the sum of \$146.50 upon two promissory notes given prior to 1885, made a new note to the defendant for that sum payable on demand, and executed a mortgage of a yoke of oxen and a horse to secure its payment. October 26, 1885, he sold the oxen for \$130, and paid the money to the defendant, who endorsed that amount upon the note.

64	607
68	275
68	503
64	607
69	523

64	607
72	584
64	607
74	530
74	590