

begun in a civil mode, in a civil court, and for the object, not of confiscation, but only of restraint.

BLODGETT, J. A petition for an injunction under the nuisance act of 1887 is a civil proceeding (*State v. Saunders, ante, p. 39*), and consequently depositions may be taken and used therein. Gen. Laws, c. 229, s. 1.

As to the other objections to the caption taken by the petitioner, it is hardly necessary to say that they were not open to him at that stage of the proceedings.

Petition denied.

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

BATCHELDER (*Jesseman, Pl. in Int.*) *v.* LIBBEY.

The clerk of an auction sale has not authority, without the assent of the owner or auctioneer, to substitute in his record the name of a principal as purchaser in place of the agent who bids off the goods without disclosing his principal, and to whom the auctioneer declared them sold.

ASSUMPSIT, to recover \$144.50, the price of a yoke of oxen. Jesseman, having twenty-four oxen, advertised them for sale at auction April 2, 1887, but, having sold some of them before that day, he procured Batchelder to put in six of his oxen to make the number good. The auctioneer offered for sale a pair of Batchelder's oxen, and called for bids. The defendant bid \$144.50, and the auctioneer said, "Sold to Walter Libbey." The clerk was about recording the defendant's name, when Libbey stepped to him and said, "Charge them to Henry Merrill: I bid them off for him;" and the clerk, without the knowledge or direction of the auctioneer, Batchelder, or Jesseman, entered the name of Merrill, as requested, instead of Libbey's, and Libbey took the cattle away from the auction stand. Libbey was, in fact, acting for Merrill in bidding off the oxen.

S. B. Page, for the plaintiff.

Burleigh & Adams, for the defendant.

BLODGETT, J. The defendant, having bid in his own name, and without disclosing his agency to the owner or auctioneer, became personally responsible for the completion of the sale. His subsequent notification to the clerk that his bid was for Merrill,

and the entry of the sale to Merrill by the clerk, did not change his responsibility. The extent of the clerk's authority in this respect being merely to record the sale as declared by and under the direction of the auctioneer, the substitution of Merrill for the defendant in the record, contrary to the declaration of the auctioneer, and without his direction or knowledge as well as without the direction or knowledge of Batchelder or Jesseman, was not within the scope of the clerk's authority, and had no effect as against the plaintiff; nor is his right of action against the defendant as purchaser affected by the clerk's uncommunicated knowledge to the contrary, because the clerk, as such, cannot be legally regarded as agent of the plaintiff for the purpose of charging him with such knowledge. See, generally, *McComb v. Wright*, 4 Johns. Ch. 669; *Nat. Fire Ins. Co. v. Loomis*, 11 Paige 431; *Gill v. Bicknell*, 2 Cush. 358; *Fiske v. McGregory*, 34 N. H. 419; 1 Par. Cont. (5th ed.) 41; Bro. Fr., s. 369; Sto. Ag., s. 126; 8 Wait Act. & Def. 58.

Judgment for the plaintiff.

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

METCALF v. WEED.

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The question whether a search-warrant sufficiently describes the place to be searched is a question of fact, to be determined at the trial term.

TRESPASS *quare clausum*. Plea, the general issue, with a brief statement alleging that the acts complained of were done by the defendant as a deputy sheriff in the service of a search-warrant. Facts found by the court.

Upon a complaint charging Parker Metcalf (the plaintiff's husband) with keeping spirituous liquors for sale, and alleging that the complainant has "probable cause to believe and does believe that certain spirituous and intoxicating liquors, viz., rum, whiskey, gin, and brandy, and ale, and certain casks, jugs, bottles, measures, and other things adapted for the illegal keeping and sale of such liquors, are kept upon the premises now occupied by said Parker Metcalf," a warrant annexed to the complaint, and referring to it, commanding the officer "to enter in the daytime the said house and premises of the said Parker Metcalf and there diligently search for the said rum," etc., was issued, and placed in the hands of the defendant for service. The acts complained of were done by the defendant in the execution of this process; and if the warrant sufficiently describes the place to be searched, they were lawfully and properly done.