

PARSONS, C. J. An action of assumpsit cannot be maintained against a county. Claims against a county must be presented to the county commissioners for allowance. P. S., c. 27, s. 10. In case of disagreement between the claimant and the commissioners as to any claim, the same may be laid before the court for decision. *Ib.*, s. 13. If the claims in dispute have been presented to the commissioners, the suits in assumpsit may be transformed by amendment into applications for a revision by the court of the judgment of the commissioners. *Plymouth v. County*, 68 N. H. 361.

The costs, including the fees in question, were properly collected by the clerk of the district police court, whose duty it was, before turning his collections over to the county treasurer, to pay, among other expenses of the court, the "fees of officers and witnesses." Laws 1913, c. 169, s. 60. As the clerk, instead of complying with the law, paid the money to the county treasurer, the county has money of the officers to whom the fees should have been paid. Whether as between the officers and the city the money collected as fees for their services belongs to them or to the city is immaterial. If the city by virtue of agreement with the officers has title to it, nothing appears transferring that title to the county. Upon the facts stated, the claims should be allowed by the commissioners, or by the court if the commissioners have disallowed them.

*Case discharged.*

All concurred.

Coös, }  
April 6, 1915. }

ARTHUR W. WALTERS, *Adm'r*, v. JOSEPH F. BELL & a.

The proceeds of property sold on execution are to be distributed in satisfaction of existing liens in the order of their priority.

Where the proceeds of an execution sale of mortgaged property exceed the sum required to satisfy the claim of the judgment creditor, the refusal of the officer to deliver the goods until the purchaser has applied the balance in his hands upon the mortgage debt is not ground for a rescission of the sale.

ASSUMPSIT. Trial by jury and verdict for the plaintiff. Transferred from the April term, 1914, of the superior court by *Sawyer, J.*, on the defendants' exception to the denial of their motion for a directed verdict. The action was brought by Martin Monahan in his lifetime and is now prosecuted by his administrator.

May 20, 1911, Patrick J. Martin mortgaged certain personalty to John S. Myers and subsequently executed a second mortgage of the same property to Lydia Martin. May 9, 1913, the defendant Bell obtained judgment in a suit against Patrick and Lydia, and gave the execution to the defendant Drew, who was sheriff of the county, with instructions to levy upon the mortgaged property. Drew sold the property without making any reference to the mortgages in the printed notices or orally at the time of the sale. When the property was sold Patrick J. Martin bid off the larger part of it, but being unable to pay the price, he arranged with Monahan to assume the purchase.

The property sold for \$109 more than was required to satisfy the execution. Monahan paid \$372.20 in satisfaction of the execution, and the defendants permitted him to retain the balance of the purchase price, to be applied on the second mortgage held by Lydia Martin. When Monahan demanded the property, Drew declined to deliver it unless the sum of \$57 due on the Myers mortgage note was paid; and this payment Monahan refused to make, although he had in his hands at that time \$109 of the amount he agreed to pay for the property.

*Goss & James and Matthew J. Ryan (Mr. Goss orally), for the plaintiff.*

*Sullivan & Daley (Mr. Sullivan orally), for the defendants.*

YOUNG, J. It is immaterial in so far as this case is concerned whether the plaintiff is or is not charged with Patrick's knowledge; for it is the rule that the proceeds of property sold on execution be distributed in satisfaction of the liens in the order of their priority. The right, and the only right, of either of the Martins in or to the proceeds of the property was the right to receive what remained after the Myers and Bell claims were satisfied. Since this is so, it is of no consequence whether the defendants' agreement to permit Monahan to retain the \$109 and apply it on Lydia's claim was intended as a gift to her, or was made by mistake. In either case, it was an agreement she could enforce over the defendants' objection only in so far as she was entitled to the proceeds of the sale. It follows, therefore, that when Drew called on Monahan to pay the Myers claim, he should have paid it out of the money he was holding for Lydia; that is, it was Monahan's duty to pay the Myers

claim and charge it to Lydia's account, and such a payment would have been an answer *pro tanto* to her claim against him. There is no force, therefore, in the plaintiff's contention that Drew was attempting to defraud Monahan when he insisted on his paying the Myers claim; for so much of the purchase price remaining in his hands as was necessary to satisfy this claim in equity and good conscience belonged to Myers—not to Lydia or to Patrick.

*Exception sustained: judgment for the defendants.*

All concurred.

Coös, }  
April 6, 1915. }

HORACE J. HOLDEN, *Adm'r*, v. FARMERS & TRADERS NATIONAL  
BANK.

Where a person acting without legal authority collects money belonging to an estate and deposits it in his name as executor, the bank is not liable for a conversion if, without knowledge of the wrongdoing, it pays out the funds upon checks drawn by the depositor.

In such case the bank is not bound to question the legitimacy of the depositor's disbursements, and is not liable for money received from the pretended executor in payment of his individual debt.

A bank is bound to know that the claimant of a deposit standing in the name of a person deceased is legally entitled thereto; and if it disclaims liability after payment of the funds to a pretended executor, an action may be maintained without previous demand.

ASSUMPSIT, to recover funds of the plaintiff's decedent alleged to have been received and wrongfully paid out by the defendant. Transferred from the September term, 1914, of the superior court by *Kivel, J.*, on the plaintiff's exception to an order of nonsuit.

The plaintiff's evidence tended to prove the following facts: David H. Cook died in 1907, leaving a will in which his sons, Edward A. and Benjamin F., were named as executors. The will was probated, but the executors never qualified. At the time of his death David had \$17.57 on deposit with the defendant. Edward and Benjamin assumed to act as executors and collected \$3,235.23 of the money of the estate. They opened an account with the defendant as "E. A. and B. F. Cook, executors," and deposited the