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[1] MICHAELMAS TERM, 20 GEO. II. 1746.

RAWLINSON *versus* STONE. In error. B. R. A promissory note payable to A. B. or his order, may be indorsed and assigned over by his administratrix; and the indorsee being plaintiff, need not make a profert in Curiam of the letters of administration. 2 Barnes, 137, 164. 2 Stra. 1260. S. C. cited 2 Bur. 1225. [See 1 Term Rep. K. B. 487, that the executors are liable personally on such indorsement.]

This was an action upon the case, brought in the C. B. against Rawlinson by Stone, upon a promissory note, payable to A. B. or order, and indorsed by the administratrix of A. B.; Rawlinson the defendant below demurred specially to the declaration, and shewed for causes of demurrer; 1st, that Stone, in his declaration, had not made a profert in Curiam of the letters of administration; and 2dly, that it did not appear by whom administration was granted; a third objection was taken at the Bar of the C. B. viz. that an executor or administrator cannot by indorsement negotiate or assign over a promissory note by the custom of merchants, so as to give the indorsee an action thereupon in his own name.

This case was argued in C. B. three times; the last time, in Hilary term 18 Geo. 2, by Serjeant Prime for the plaintiff there [Stone], and Serjeant Birch for the defendant there [Rawlinson], when per totam Curiam, the two first objections were over-ruled, because the letters of administration cannot be supposed to be in the custody or power of the plaintiff Stone the indorsee; and upon the trial of the cause, it would be incumbent upon him to shew to the Court and the jury, that the person who indorsed the note to him was the legal and proper administrator of A. B.; and the third objection was likewise over-ruled, because it is well known to be the constant practice and usage among merchants for executors and administrators to indorse and negotiate both promissory notes and bills of exchange; and the Courts of Justice will always endeavour to adapt the rules of law to the usage and course of trade, ad ea quæ frequentius accidunt jura adaptantur; and the Courts of Law are warranted in this, by the words of the statute 3 and 4 Ann. c. 9, sect. 1, which says, that promissory notes, payable to any person [2] or persons, his, her, or their order, shall be assignable or indorsable over in the same manner as inland bills of exchange are or may be according to the custom of merchants. The Court said, that the equitable interest

BRUCE *versus* RAWLINS AND OTHERS. C. B. Trespass against Custom-House officers for entering plaintiff's house, and searching for run-goods where they found none; jury assess 100l. damages on a writ of inquiry. Court refused to set aside the inquisition. [See *Cooper* v. *Boot*, 1 Term Rep. K. B. 535, n.]

Trespass for breaking and entering the plaintiff's house at A. in Essex, and opening and searching several boxes and drawers therein; the defendants suffered judgment to go against them by default. Upon executing the writ of inquiry of damages, it was proved, that the defendants were Custom-House officers; that on the 4th of July last, in the day-time, they entered the plaintiff's dwelling house with a writ of assistance, without any constable, in order to search for uncustomed goods; the plaintiff's wife and daughter being only at home, were frightened and much surprised, delivered to the defendants (at their request) the keys of several boxes and drawers, which the defendants searched, but found no uncustomed goods. They staid in the house about an hour, broke no locks, bolts or doors, and did very little or no damage; and departed, cursing and saying, Damn it, there are no goods! Whereupon the jury found 100l. damages.

[62] Serjeant Burland moved to set aside the inquisition for excessive damages, under the circumstance of this case, and upon an affidavit that the defendants did little or no damage; that they had been informed that the plaintiff's son was lately come home from India, and had secreted some run-goods in the plaintiff's house, and that they verily believed some of the jury were the plaintiff's friends and acquaintance, and had favoured him in giving such large damages: he cited a case in B. R. of *Stringer* versus *Custom-House Officers*, for stopping a waggon to search for run-goods, and found none: the jury on an inquiry gave 100l. damages; the Court set aside the inquisition; and upon the second writ of inquiry, the jury only found five guineas damages. He endeavoured to distinguish this case from *Redshaw* versus *Brook and Others*, 2 Wilson, 405, which was 200l. damages given by a jury upon a trial of a like trespass; because an attaint lies upon a false verdict, but not upon an inquisition of office, as this is; that this plaintiff was only a butcher, but Redshaw was a shopkeeper in London.

Serjeant Leigh for the plaintiff, in shewing cause, produced an affidavit, wherein it was sworn, that the plaintiff knew only the face of one of the jury, that he had no acquaintance with him or any of the rest of them; that the defendants came to the plaintiff's house in July last, said they had received information, (but not from whom), that uncustomed goods were secreted therein, and that they must search the house; that the plaintiff's wife and daughter were much terrified; that the defendants demanded and received from them the keys of several boxes and drawers in the house, wherewith they opened and searched the same, but found no uncustomed or prohibited goods therein, or in any other part of the house where they also searched. The serjeant insisted there was no difference between this case and that of *Redshaw* versus *Brook*; only that the damages there were 200l. for a like trespass to this now in question, wherein there are only 100l. damages; and therefore he prayed the rule to shew cause why the inquisition should not be set aside, might be discharged.

Wilmot Chief Justice. This is an inquest of office to inform the conscience of the Court, who, if they please, may themselves assess the damages; but I am of opinion we ought not to interpose in this case, which differs widely from the case of stopping the waggon. This is an unlawful entry into a man's house (which is his castle), an invasion upon his wife and family at peace and quietness therein, frightened and surprised by these defendants; who under pretence of information received, and **[63]** colour of legal authority, demand the keys of, and search all the boxes and drawers in the house. I cannot conceive what these Custom-House officers mean, by acting in this unjustifiable manner, after this matter has been so often tried in Westminster-Hall; they know the risk they run by such conduct, and must take the consequence that may fall upon them by the verdict of a jury. The plaintiff being a butcher, or inferior person, makes no difference in the case. The suspicion of having run-goods in his house is a very injurious imputation upon him; and though he is but a butcher, it is the same damage to him as if he was the greatest merchant in London. The defendants have invaded the plaintiff's house and property, and disturbed his family; they continue to go on and act against the subject in this illegal manner, and then come to this Court, and say—"The damages are too large, we pray you reduce them."

For my own part, I am very clearly of opinion, that this is one of those cases wherein the Court will not interpose.

Gould Justice. The entering the plaintiff's house under colour of legal authority, aggravates the trespass committed by the defendants; and though they had a writ of assistance, yet as they had no constable with them, they would have been trespassers, notwithstanding they should have found uncustomed goods in the plaintiff's house. See stat. 12 Car. 2, cap. 19, sect. 1 & 4, and stat. 13 & 14 Car. 2, cap. 11. A cause was tried before me at Poole (which is a town and county of itself), against a Custom-House officer and a constable, for entering the plaintiff's house to search for run-goods; and though they found such goods in the house, yet because the constable was not a constable of the town of Pool, but of the county of Dorset, they were trespassers, and the jury gave the plaintiff 100l. damages.

Yates Justice. The case must be very gross, and the damages enormous, for the Court to interpose: here the defendants have acted under colour of legal authority, and we have no line or measure to go by. I think the damages are not excessive, and have no desire to set the inquisition aside. Rule discharged. Absent Lord Commissioner Bathurst, in Canc'.

DOE ON THE DEMISE OF MASON *versus* MASON. C. B. A single admittance to a copyhold is evidence to prove the custom of a manor for lands to descend to the youngest nephew: which contradicting the evidence on the other side, the Court refused a new trial.

[Followed, *In re Chenoweth* [1902], 2 Ch. 496.]

Ejectment of copyhold lands holden of the manor of Denham-Hall in the county of ———, tried before Mr. Baron Smythe at the last assizes, when a verdict was found for **[64]** the plaintiff, who claimed as being the youngest nephew, and heir by the custom of the manor, of the last person seised of the lands in question.

On the part of the defendant it was contended at the trial, that the custom of the manor was, that the copyhold lands descended to the youngest son; or if no son, to the youngest brother of the tenant last lawfully seized; and that the custom extended no farther.

On the part of the lessor of the plaintiff it was contended at the trial, that the custom of the manor was, that the copyhold lands descended to the youngest son; if no son, to the youngest brother; if no brother, to the youngest nephew; if no nephew, to the youngest cousin of the tenant last lawfully seised.

It was proved for the lessor of the plaintiff at the trial, that he was the youngest nephew of the person last seised of the premises; and it appeared, by the court rolls of the manor, that a youngest nephew, at a court leet and court baron held in and for the said manor in 1657, was admitted tenant, as heir, by the custom, to the person last seised of lands in this manor: this was the only evidence for the plaintiff.

For the defendant it appeared, that at a court leet and court baron held in and for the said manor in 1692, the jury had homage by a presentment found, and which was entered upon the rolls of the manor, that the custom of descent extended only to the youngest son; and if no son, to the youngest brother, and no farther. Also two old witnesses swore, that they had heard and believed, that this was the custom of the manor, that the custom of descent went no further than the youngest son and youngest brother.

Serjeant Leigh moved for a new trial, suggesting that this was a verdict contrary to evidence; and insisting that the single instance of admittance of the nephew in the year 1657 was not sufficient evidence to support the custom contended for by the plaintiff; whereupon a rule was made to shew cause why there should not be a new trial, and Mr. Baron Smythe having reported as above, gave no opinion one way or other in the case.

Serjeant Whitaker for the plaintiff, shewed cause why there should not be a new trial; and insisted, that here was evidence on both sides, that the evidence given for the plaintiff was legal and admissible, and contradicts the defendant's evidence, and in such case the Court never grants a new trial; besides this is an **[65]** ejectment, and does not conclude the defendant from trying the custom again upon another ejectment. And of this opinion was the Court. And the Chief Justice said, he