

hear and determine the same, and to render judgment for or against the executor or administrator, as the case may require, and that such executor or administrator may be brought in by process, and the court may render judgment in the same manner as if he had appeared voluntarily.

In *Clarke v. Mathewson*, 12 Pet. 164, a bill had been filed by Wetmore, who subsequently died. Clarke was appointed administrator, and filed a bill of revivor. Both the administrator and the respondent were citizens of Rhode Island. The court held that both upon the settled rules of equity jurisprudence, and under the statute above referred to, "the revivor of a suit in equity by or against the representative of a deceased party was a matter of right and a mere continuation of the original suit." Rule 56 in equity is declarative, not only of the practice of the court, but of the provisions of the statute. The statute of Louisiana, in this respect, operates only upon her own courts, and cannot deprive this court of a jurisdiction already vested and expressly continued by an act of congress.

The demurrer is therefore overruled, with leave to answer by the next rule-day.

See *Vattier v. Hinde*, 7 Pet. 252; *Kennedy v. State Bank*, 8 How. 586; *Nevitt v. Clarke*, *Olcott*, 316.

DUDLEY v. LAMOILLE CO. NAT. BANK.

(Circuit Court, D. Vermont. November 7, 1882.)

ATTACHMENT MAINTAINED THROUGH RECEIPTOR.

A deputy sheriff can maintain an attachment of personal property on the farm of an attachment debtor who does not reside upon it, through a receiptor who obtains the record title to the farm, for the purpose of keeping such property there, and the direction and control of the agents of the debtor in charge of the farm for him, one of whom was placed in chief control after the attachment was made.

Aldace F. Walker and *William H. Dickinson*, for plaintiff.

Philip K. Gleed and *Daniel Roberts*, for defendant.

WHEELER, D. J. The principal and controlling question in this case is whether the plaintiff, as deputy sheriff, could maintain an attachment of horses on the farm of the owner who did not reside upon it, through a receiptor who obtained the record title to the farm for the purpose of keeping the horses there, and the direction and control of

the agents of the owner, in charge of the farm, for him, one of whom was hired and placed in chief control after the attachment was made. There is no question of fraud in law arising out of possession by the vendor of personal property after a sale. On that question the law of Vermont is peculiar, and raises a conclusive presumption of fraud, as against creditors of the vendor, out of such possession. But as to an attachment of personal property on mesne process the law of Vermont appears to be the same as that of other states where such attachments are had. The property must be taken into the custody of the officer making the attachment, to the exclusion of the defendant in the writ of attachment. The custody of the officer may be had through the agency of others acting under him. It may be maintained on the premises of the person whose property is attached, by having his consent, without any other title to the real estate; and the acquisition of the title to the real estate will not bring with it the custody of personal property of a former owner remaining there without further taking possession of it. *Flanagan v. Wood*, 33 Vt. 332. The possession of the defendant in the attachment must in some way be excluded, and that of the officer in some way be taken. In this case the actual possession of the defendant in the attachment would not have to be excluded from the farm, for he was not there at the time in question, and did not reside there. His control was only that of his agents; when that was changed his possession was changed. This was probably sufficient, even while the agents remained the same as when the attachment was made. *Shepherd v. Butterfield*, 4 Cush. 425; *Slate v. Barker*, 26 Vt. 647. But in this case the person in chief control of the premises came in after the attachment; and came in subject to the receptor's control as to the custody of the horses. He never was the servant or agent of the attachment debtor as to the possession of horses. His control of them was always the receptor's control; he had never any custody for the attachment debtor to be changed to custody for the receptor. He thus became the keeper for the officer of the horses, and his custody as such would make the attachment good, even if the right to the real estate had remained wholly in the debtor. *Newton v. Adams*, 4 Vt. 437; *Baldwin v. Jackson*, 12 Mass. 131; *Train v. Wellington*, Id. 495. This case is distinguishable from *Flanagan v. Wood*, 33 Vt. 332, much relied upon by the defendant, in two important particulars, although it is very much like that case in many other respects. These particulars are that there the debtor was in possession of the premises himself at the time of the attachment, and so continued afterwards, while

here he was not; and that there the same servant of the debtor remained there with him after the attachment, while here there was a new agent, which would indicate a change even to an observer, and put all those having occasion to know upon inquiry.

The motion for a new trial is overruled, and judgment is to be entered on the verdict.

MICHELS v. OLMSTEAD.

(Circuit Court, W. D. Missouri. October Term, 1882.)

1. EVIDENCE—PAROL MERGED IN WRITING—COLLATERAL MATTER OR CONDITION.

When parties, without any *fraud* or *mistake*, have deliberately put their engagements in writing, the law declares the writing to be not only the *best* but the *only evidence* of the agreement; but this does not prevent parties to a written agreement from proving that either contemporaneously or as a preliminary measure they had entered into a distinct oral agreement on some collateral matter, or an oral agreement which constitutes a condition on which the performance of the written agreement is to depend.

2. FRAUD NOT PRESUMED.

Where a defense of fraud and deceit is set up, the law will presume that the plaintiff acted honestly and in good faith, until defendant has clearly proven the contrary.

Tichenor & Warner, for plaintiff.

Peak & Yeager, for defendant.

KREKEL, D. J., (*charging jury*.) The plaintiff, Jacob Michels, sues George P. Olmstead on an agreement in writing which stipulates for machinery to be furnished by plaintiff to the defendant at specified prices. The law favors written agreements between parties to a contract, because they are supposed to decrease the liabilities for misunderstanding. It is presumed that when a written agreement is entered into that it contains the whole of the conditions and undertakings of the parties to the contract. The supreme court of the United States has had this matter under consideration lately, and I quote from its decision so much as will show the views taken of written contracts. Chief Justice WAITE, in *Bast v. Bank*, 101 U. S. 96, says:

“When parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only evidence of the agreement, and we are not disposed to relax the rule. It has been found to be a wholesome one, and now that the parties are allowed to testify in their own behalf, the necessity of adhering strictly to it is all the more imperative.”