

New Jersey Supreme Court.

Joseph Todd and Philip C. Rafferty,
partners, &c., as Todd & Rafferty,

vs.

Theodore F. Hoagland, Luther
VanDerveer, Martin S. Van Derveer
and Aaron L. Green.

In Case.

Examination of witnesses, &c., taken before the undersigned, a Supreme Court Commissioner, at his office in Somerville, in the County of Somerset, on an application pending in said Court in behalf of Todd & Rafferty for the amercement of Thomas Codington, late sheriff of the county of Somerset, for failure to perform his duty on an execution in favor of said Todd & Rafferty, taken February 22d, 1872, in presence of John Schomp, Esq., attorney of plaintiff, Todd & Rafferty, and of Alvah A. Clark, Esq., attorney of said Codington, late sheriff, in pursuance of a rule of said Court and on due notice admitted. 10

I. N. DILTS.

MARTIN S. VANDERVEER. I and my brother were engaged in the mercantile business at Rocky Hill, in the county of Somerset, in May, June and July, 1871; we had been in business from the 1st of May 1870 about, and continued in business until July, 1871; about June 1st, 1871, I couldn't tell what stock we had in the store; could guess at it; probably about \$4,000; I was visited by the sheriff about the 1st of June, 1871, with an execution in favor of Todd & Rafferty; he did not take the store and goods in 20

his possession and custody; never paid the sheriff anything on that execution; I did not pay the sheriff the money taken in the store for the month of June on any other execution; he had no other execution that I know of; I do not know amount of sales for June; I think by examination of the books I could come pretty near ascertaining the amount of our sales for June, 1871; the sheriff took the possession and custody of the goods in our store afterwards in July; I couldn't state the time positively; about the middle as
 10 near as I can remember; I paid nothing of the receipts of the store prior to the sheriff's taking possession to any execution creditor.

And being cross-examined he says: At the time the sheriff served on us this execution in favor of Todd & Rafferty, I knew there was in his hands on execution in favor of Cornelius M. Vreeland for about \$2,000; that did not occur to me when I answered above; I knew the Vreeland execution was before the Todd & Rafferty execution; the sheriff sold the store goods of the defendants; there was an appraisement before the sale; the appraisers were William Holmes,
 20 Charles Shann and Peter Case; Holmes was in the clothing business; Shann is a retired merchant; he and Holmes both reside at Rocky Hill; the sheriff received all the receipts of the store from the time he made the inventory; I think the sheriff received the receipts of sales that were made prior to the making of the inventory; the sheriff had in the store John P. Suydam before the inventory and sale was made to take charge of the receipts of the store; I don't recollect how long he had charge of the store before the sale,
 30 probably a week; I didn't charge my mind with it; by the \$4,000 worth of stock in the store June 1st, I mean the actual cost of the goods; at the time of the sheriff's sale I thought the cost value of the goods in the store was about \$3,700, or \$3,800; this is only a guess; we wanted to

close our business, but we bought goods through the month of June, and July some; in my opinion we took in about \$500 cash between the 1st of June and the time the sheriff took charge of the property; I could tell pretty well the amount from our books; I sketched over it hastily the other day, not accurately; I can't tell how much of that \$500 was used in the purchase of other goods; I have lost or mislaid a good many of our bills; I think I bought more than \$500 worth of goods between June 1st and the time the sheriff took charge; the goods were sold by the sheriff at public sale—auction; the stock sold by the sheriff did not bring cost; the sale of store goods at public auction never is advantageous; I doubt whether the stock in the store, June 1st, would have brought enough at a sale by the sheriff, to have satisfied the Vreeland execution, I don't think it would. 10

(The further examination of this witness is here suspended, in consequence of the absence of the books, until Monday next, 26th inst., at 10 A. M.)

It is here agreed by and between the attorneys of the respective parties that the following facts shall be considered as proven: 20

1st. That there was issued out of the Supreme Court of New Jersey, directed to and received by Thomas Codington, sheriff of the county of Somerset, an execution commanding him to make of the goods and chattels of Theodore F. Hoagland, Luther Van Derveer, Martin S. Van Derveer and Aaron L. Green, the sum of five hundred and eighty-eight dollars and eighty-five cents (\$588,85), which execution was founded upon a judgment previously obtained by Joseph C. Todd and Philip Rafferty against the above named defendants on the 29th day of May, 1871, which writ of execution was received by said sheriff, June 1st, 1871. 30

2d. That said execution was never returned to the court out of which it issued.

3d. That said sheriff never paid to plaintiffs in said execution, their attorney, nor to any one in their behalf, any money in satisfaction of said execution in whole or in part.

Adjourned to Monday, 26th inst., at 10 A M.

Monday, February 26th, 1872, met pursuant to adjournment; examination of Martin S. Van Derveer continued:

Direct examination.—(Shown a book marked by me
 10 “Exhibit A.”) This is the day-book of our firm, and commenced April 28th, 1870, and ended July 17th, 1871; this is our book of original entries; we also kept an account of our cash sales; this was one cash book; (referring to and being shown book marked by me—“Exhibit B.”) The two books are here offered in evidence. I can’t say those two books contain an account of all our sales from June 1st, 1871, to the time the store was taken possession of by the sheriff; a man would come in and say I want this article, and will pay to-morrow; and such things were not put on
 20 the day-book; when paid, it would go in the drawer and to another cash book; so that the two books do contain a full account of our sales for the time specified; no part of the sales made, or the proceeds thereof, was paid to the sheriff on the Vreeland execution, or on that of Todd & Rafferty.

Cross-examined by Mr. Clark.—I can tell by this book the amount of cash we received between June 1st, 1871, and the time the sheriff took possession of the store; that amount is four hundred and thirty-seven dollars and nine-
 30 ty-nine cents, as I make it, cash received for sales made during that time; I can’t tell the amount we paid out for stock during that time; I said the other day I thought

about \$500, and that is my opinion still. (Objected to as not a cross-examination.) I think the sheriff took possession of the store on July 18th; we sold last on the 17th; when Mr. Suydam took possession he had separate books; the amount of credit sales from June 1st, 1871, till the sheriff took possession was \$582.89 nett; not much of the money on these books has been collected, some perhaps; the accounts are not very good.

Direct resumed.—The sale of the stock was conducted by the sheriff as all other vendues are conducted; Mr. Peter Case was the crier; I know you wanted the sheriff to adjourn the sale; I heard so; I heard you ask the sheriff to adjourn it; the sale was not adjourned then; it had been adjourned once, for four or five days I think, may be a week, I have forgotten; in my judgment there was not in the store on the 1st of June stock enough to have paid, if judiciously sold, to have paid the execution of Vreeland and that of Todd & Rafferty, or any part of it; the stock of goods in the store was not of such a character that it would have been injured by a postponement of the sale for a week.

MARTIN S. VAN DERVEER.

Sworn and subscribed before me, February 26th, 1871.

I. N. DILTS,

Supreme Court Commissioner.

MARTIN S. VANDERVEER, called on behalf of the defendant, Thomas Codington, on his oath saith: Twenty per cent. ought to be deducted from the cash and credit sales to ascertain the cost price of the goods; that twenty per cent. is to answer for profit on the goods, and rents and expenses.

Cross-examined he says:

That is about our average profits on our sales; I don't mean to say we sold these goods for twenty per cent. more

than they were worth; the goods were worth at Rocky Hill what we sold them for and charged for them at retail; I don't know that we then sold for less profits than at other times

MARTIN S. VAN DERVEER.

Sworn and subscribed before me, February 26th, 1872.

I. N. DILTS,

Supreme Court Commissioner.

JOSEPH C. TODD, of the city of Paterson, one of the
 10 plaintiffs being duly sworn on his oath saith: I am a member of the firm of Todd & Rafferty; Philip Rafferty is the other member; I had a claim against Hoagland, Van Derveer & Co., the defendants in the execution mentioned; no part thereof has been paid to me; I know there was a sale advertised under that and other executions against the same defendants, at least I was told so by the advertisement and a letter from sheriff advising us he had made a levy, and also by a telegram received the day before the sale telling us the sale was to come off; from that telegram I first
 20 learned the day of sale; I came up here immediately by the first train I could get, and tried to see Sheriff Codington; I did not find him at home; I arrived here I should think about 12 o'clock, may be a little later; I am not positive as to the time, and immediately went to the sheriff's office to look for him; I first saw the sheriff late in the afternoon, perhaps 5 o'clock; I know I was in every place in town looking for the sheriff; couldn't get on the track of him; I told the sheriff that was the first I knew anything about it; he did not say when he had first sent me word
 30 that I recollect of; I wanted the sale postponed, that was what I came for; the sheriff did not seem disposed to postpone the sale; he refused; I wanted to get some parties to go and attend the sale who were judges of the goods; I am

a machinist; I staid over and went to the sale next day from here; the next day I again asked the sheriff if he wouldn't postpone the sale; he said he had all his hand bills and advertisements up, and it could not be postponed again; I then proposed if he would postpone it I would be to all the expense of advertising again. (This answer objected to by sheriff's counsel.) We stated to the sheriff, that is myself and Mr. Schomp, that we would give it all the publicity possible; would advertise it and send around hand bills; these propositions were not acceded to; my purpose to get others to attend the sale was communicated to the sheriff; when I got there I saw more clearly the necessity of having persons there who were acquainted with the nature of the goods; none of the goods to be sold that I saw were in my line of business; I saw some of the goods sold; thought they were selling very cheap, as near as I could judge of the thing; I thought they were selling for about twenty-five per cent. of their value; there were not many people there as buyers, three or four, perhaps half a dozen; since the sale I have received no money.

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Crass-examined he says:

I think I was there about 2 1-2 hours after sale commenced; I think I got there between 10 and 11 o'clock; I don't know whether the sale opened before or after dinner—think before; I think they sold—it might have been an hour—may be an hour and a half before dinner; they adjourned for dinner; I think I went away about 3 o'clock; there might have been probably a dozen or fifteen persons attending the sale; very few, and very few of them buyers—at least I didn't see them buy; that is my reason for saying they was not buyers; I didn't think they would sell the goods all that day; I think two days would have sold it out; I didn't go back the second day, nor send any one to

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look after the goods; I didn't try to get any one to go the second day to purchase the goods or look after the sale in my interest; I don't know whether the sale had been advertised according to law or not; the sheriff told me the sale was publicly known through all the surrounding country; (objected as not a cross-examination.) I have given all the reasons why I desired a postponement of the sale; I said to the sheriff the reason why I wanted the sale postponed was I hadn't had sufficient notice; I don't recollect any-
 10 thing else; I can't say the precise words I told to the sheriff; my object was to get persons to come there to buy the goods; I think I communicated that to the sheriff; some one was selling as auctioneer; I didn't know the gentleman.

In chief.

I left there somewhere about 3 o'clock; I got home about 7 o'clock in the evening; I could have got to Rocky Hill from Paterson at about 12 o'clock, 11 to 12 o'clock; the gentleman I wanted to attend the sale lived at Paterson; I
 20 could not have seen them and made arrangements for them to go next day; I could in a week's time; I would have been satisfied if I could have got an adjournment for three days.

Cross-examined.—I started from Paterson to come here to get an adjournment; at that time I did not know what the goods were; when I started from Paterson, I intended if I got an adjournment of a sale to get persons to attend the sale to buy the goods; I think the telegram I received from Sheriff Codington is here; this is the telegram I re-
 30 ceived July 23d, 1871, from Sheriff Codington (being shown paper marked 'Exhibit C'); this is a letter I received from the sheriff (looking on paper marked 'Exhibit D'); Mr. Youngblood, to whom the telegram was directed was our attorney and had charge of the case at that time; after I

received the notice that the sale would be on July 25th I made no effort to get any body to go from Paterson to see these goods; I don't know positively that an adjournment of three days would have been of any benefit to me; when I came I was told by a lady I saw at the office that the sheriff was in town; I don't know where he was; I refer to persons in the clothing business at Paterson—Watson & Lyon, and two or three others; I don't now recollect their names now, though I know them; they were Jews I think; I did not send a telegram to Paterson from here; I made no effort to procure the attendance of Watson or any one else here. 10

In chief.

Could you and would you have had parties to the sale who were dealers in and judges of the kind of goods in that store, and that were to be sold by the sheriff, if you had procured an adjournment of three days?

Ans. Yes sir; I would have tried to do it—it is a thing I could not be certain of it

Ques. Why couldn't be certain of it? 20

Ans. Because you can't be certain of anything—I would have got the parties started—I would have had them there if I had had to pay their expenses.

The reason I didn't telegraph to Paterson or endeavor to procure the attendance of Watson or some one was, I didn't know the nature of the goods.

Cross-examined:

The sheriff had told me there were dry goods in the store; he might have told me; I don't recollect of his telling me anything about it; I don't remember whether he gave me a description of the goods, the day before the sale; the parties of whom I speak were dealers in clothing only; I thought 30

the largest portion of the goods in the store was clothing; I couldn't say what proportion—ready made clothing; I made no estimate that day of the quantity of clothing there and the value of it.

In chief.

After got there, my intention was to have got parties there who were judges of the other kind of goods.

Cross-examined:

10 I intended to have got to buy the shoes persons in the shoe trade there—David B. Beam; I had never spoken to him about it; I don't know that he buys goods in that way, nor that Watson or any of those Jews buy in the way I now propose; I don't know what proportion of the stock the boots and shoes composed; I made no calculation; I simply saw them there; I couldn't say whether or not it would have made any difference in the proceeds of the sale if either of those gentlemen had been present.

In chief.

20 If I had got these men out there and the goods were cheap, I intended to have authorized them to buy them and sell them for us.

Cross-examined:

My object in getting these gentlemen to inspect these goods, was simply to ascertain their value.

In chief.

Having ascertained the value of the goods, I would have bought them.

J. C. TODD.

Sworn and subscribed before me, March 9th, 1872.

I. N. DILTS,

Supreme Court Commissioner.

May 31st, 1872, the parties and their respective attorneys, met at my office by consent, to resume the taking of testimony in this case at 11 o'clock, A. M.

LUTHER VAN DERVEER, a witness produced on behalf of Mr. Sheriff Codington, being duly sworn on his oath saith: I was a member of the firm of Hoagland & Vanderveer, against whom Todd & Rafferty obtained a judgment in Supreme Court; Martin S. Vanderveer, a previous witness, is my brother; I was present and heard the statement of my brother, as to the cost value of the goods 10
in our store about the first of June; I think there were about \$4000 worth of goods in the store then; I think so, as we took an inventory of them about the 1st of April previous; in my judgment at the time of the sheriff's sale the goods had been run down about \$300, and that there were about \$3700 worth in the store; I attended the sheriff's sale; I suppose the goods at this sale brought in the neighborhood of half price; there was not on the first of June in store, according to the prices they brought at the sale, more than enough goods to satisfy the Vreeland execution; there were at that time, three stores in Rocky Hill; 20
the next nearest town where there are stores, is Kingston; it is about three miles distant and has about three stores; Rocky Hill is four miles from Princeton, and fourteen from Trenton; there is a store at Griggstown, three miles distant, and Blawenburgh four miles, one store there; Harlingen is about four and a half miles distant, and there is one store there; Somerville is about thirteen and a half miles from Rocky Hill, by Harlingen, and fifteen by Millstone.

And being cross-examined, he says:

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There were goods sold out of the store from first of June up to the time the sheriff took possession eight or nine days before the sale; the regular and ordinary business was car-

ried on; we received the money, (M. S. & L. Van Derveer); we paid no part of it over to the sheriff; I could not tell what amount of goods we sold in a year there—with a good stock, about \$1000 per month, or something like that; I knew of the judgments and executions against us.

In chief.

The goods were from time to time replaced in the store; I don't know to what amount, five hundred dollars worth perhaps between the levy and sale.

10 Re-cross-examined:

I have no particular source of information as to the amount of \$500 worth being replaced, but I think it was about that much as there were a good many goods we had to buy to keep the store running, as sugar for instance; I don't know how many barrels of sugar we bought, nor how much; we bought some of E. M. Couse; I think though my brother bought all the goods; I don't know who else; I suppose my brother has the bills, though I think he said in his testimony he had lost some of the bills; I
20 suppose we bought no more goods than just what were necessary to keep the store running; it was our intention and purpose to reduce the stock; we wanted to get out of the business; we bought these goods for the purpose of selling the others we had on hand; I can't tell, but I think we may have bought some dry goods in this time, but not many; no boots and shoes and no other stock.

LUTHER VAN DERVEER.

Sworn and subscribed before me, May 31st, A. D. 1872.

I. N. DILTS,

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Supreme Court Commissioner.

PETER A. YOUNGBLOOD, of the City of Paterson,
a witness produced on behalf of the sheriff being duly affirm-

ed, alleging himself conscientiously scrupulous of taking an oath, saith:

I am an attorney-at-law; I have the execution of Todd & Rafferty in my hands now; I was the attorney in that case and issued that execution, or rather it was sent to me by the Clerk; it was issued by direction; I sent it to the sheriff of Somerset; I asked the sheriff in the letter I wrote him, enclosing the execution, to push it; I have no copy of that letter, my docket and a number of valuable memoranda were destroyed by fire about six months ago; I remember that from the fact that I always use that expression in sending executions to sheriffs, though I always keep copies of letters on business matters; I received a reply from the sheriff; I have one here dated June 20th, 1871; (offered letter in evidence and marked 'Exhibit No. 1' ex-parte sheriff); I made answer to it; I told the sheriff in substance this, of course I can't give the phraseology—"to do the best he could for my clients—that I would notify my clients of the information he had given me, and if there were any other suggestions I would write or telegraph him; I remember nothing more than that he should do the best he could for my clients until further order; I sent his communication immediately to my clients, or laid it before them; I don't remember whether I sent or took it; after the receipt of that communication authorized the sheriff to use his discretion most certainly; I said as nearly as I remember, "do the best you can for my clients;" that was the purport of it certainly; I said that because the contents of the letter were such that I didn't suppose there was much chance; I am not positive but I think I took the sheriff's letter myself or gave it to the book-keeper, Mr. Stewart; I shouldn't have given it to any body but the book-keeper, or one of the members of the firm.

Ques. After you had given the information contained in

the letter, dated June 20th, to the firm, did they not conclude there was no chance of collecting from the defendants, in execution, and make an effort to secure the money in another way, through some party in New York? (objected to by Mr. Schomp, attorney for Todd & Rafferty.)

10 Ans. A few days after I had received the letter, I called accidentally in the office of Todd & Rafferty on other business individually with the book-keeper; as I was about leaving, he asked me whether an execution on this
 20 claim could issue in New York without further proceedings? I told him 'no.' He told me there was a party in New York, one of the party or firm of which was there present, and represented that were owing Hoagland & Van Derveer, the Rubber firm, something like \$400; I replied that if the defendants would allow it, there was no doubt the money could be paid to Todd & Rafferty, and that I would notify the sheriff and have it receipted on the execution, but that I couldn't see under the circumstances, any way of getting it unless the parties were Jerseymen—that is owned real
 20 estate here. I suggested further that the only way they could do it there was by way of attachment which couldn't be brought under the statute; I have no further recollection of anything more just there.

I gave no further instructions to the sheriff after I wrote him I would lay his information before my clients; I had no further instructions to give him.

And being cross examined, he says:

I never gave the sheriff any stay on the execution—nothing further than my general answer to do the best he could.

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PETER A. YOUNGBLOOD.

Sworn and subscribed before me, May 31st, A. D. 1872.

I. N. DILTS,

Supreme Court Commissioner.

Offered in evidence by Sheriff Codington the execution

Cornelius M. Vreeland vs. Martin } S. Van Derveer, Luther Van } Derveer, <i>et al.</i> }	In Somerset Circuit Court for \$2000 Debt, \$5 costs.
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Marked 'Exhibit No 2,' *ex-parte* the sheriff.

THOMAS CODINGTON, of Somerset, a witness in behalf of the defendants, being now on his oath saith: The execution in favor of Cornelius M. Vreeland against Martin S. Van Derveer, *et al.*, was received by me May 17th, 1871; I had a correspondence with Mr. Youngblood in reference to this matter, but have made dilligent search for it and cannot find it; I had a correspondence directing me to do the best I could for his clients, to collect the money; (Mr. Schomp here objected to proving this by the sheriff); I don't recollect the date—don't recollect the particulars; he left it with me to do the best I could to get the money; he rather left it to me to do what I thought best about it; having received the execution of Todd & Rafferty, June 1st, 1871, I could not in my judgment have made enough to satisfy both claims; I don't know that I could have made more than enough to satisfy the Vreeland execution; this letter of June 20th was written by my son Lewis, my deputy, in accordance with my instructions; there were three or four advertisements put up, one at Harlingen the others at Rocky Hill six or seven days before the sale; I saw Mr. Todd the day before the sale; I don't think he made any reason for adjourning the sale except possibly to give it more publicity; I think Mr. Schomp was with Todd; I think nothing was said about the kind of goods to be sold; I have no recollection of Mr. Todd saying anything to me about his wanting the sale postponed so as to get persons to come there to purchase; I suppose there were about a dozen or fifteen when began to sell, present first day and

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forty or fifty in the afternoon; the second day there was more than the first; the sale lasted for three days; third day we had a very good attendance; I think probably from 30 to 50 on an average; this is the original inventory and appraisalment; (offered in evidence and marked by me 'Exhibit No. 3,' *ex-parte* Sheriff Codington); the amount paid on the Vreeland execution was \$1,839 80, together with sheriff's execution fees and expenses makes the amount of the sale; I think they amounted to \$50 or \$60; I gave a
 10 statement of it to Mr. Bartine, on which the fees and expenses were marked, but he couldn't ever find it; the notices of sale were put up in the township where the property was to be sold.

Cross-examined, witness says:

Notices of the adjournment were put on all the notices of sale; I have no copy of those notices; I didn't keep any; they were written; the notices of adjournment were put up the day the sale was to have been first; this did not enumerate the different articles; the notices were to sell out a
 20 store at Rocky Hill, of Martin S. Vanderveer and others, store goods generally, dry goods and groceries; I found the opinion that there was not June 1st, goods enough in the store to satisfy both executions, in the way the goods sold; I don't know that I have any other reason for thinking so; these goods I sold were all the property of Martin S. and Luther Van Derveer in this county that I could find; I made the first levy shortly after I received the first execution—a few days after, perhaps three or four days; I made my levy under the Todd & Rafferty execution right away after
 30 I got the execution; I haven't that levy with me; I have it in my docket; I next after making that levy, advertised the property and put Mr. Suydam in possession of the property to receive the proceeds of the store until it was sold;

I advertised the property to be sold July 22d, 1871; I did not make an inventory at the time I made the levy ; I couldn't tell when I put Mr. Suydam in possession, exactly, eight or nine days before the sale I think, probably not more than eight days; I think it was as long as eight days; I did nothing with the property between the first day of June and the time I put Suydam in possession; Martin S. and Luther Van Derveer had the property during that time; I was in the store between June 1st, and the time I put Suydam in possession, twice or three times, can't say 10 positively; think I saw them there; I didn't see much selling go on; I suppose they were selling some; I received none of the proceeds of the store between June 1st and the time I put Suydam in possession; none of the proceeds of sales from the store during that time were appropriated to the Vreeland execution that I know of, nor do I know what became of them; I was in store I think between June 1st and 20th; they were in the store; I didn't see them selling much; there was a Post Office in the store, and they had to have it open I suppose. 20

Ques. Was there by reason of anything you had done or caused to be done, anything to prevent the defendants, between June 1st and 20th, from selling the goods and appropriating the proceeds to their own use?

Ans. Yes, I had talked to Mr. Van Derveer about it; I told him I had a levy on those goods, and they couldn't be transferred without my knowledge: (question repeated) I have nothing further to answer; that's all I had done; I couldn't say how often I was in the store between June 1st to 20th; every time almost, I was down that way and that 30 was twice a week, sometimes three times; I asked them for proceeds of the store between June 1st and 20th; I don't recollect the day; couldn't tell about what time; I asked them every time I was there; I got none at all; the pro-

ceeds of the store received by Suydam are part of the money returned as raised by me; I made Mr. Suydam my deputy; I don't think I swore him; he at that time, I suppose, owned the Vreeland judgment; I have no recollection that Mr. Todd asked me to adjourn the sale; he might have done it; you asked me; I didn't understand it that Todd & Rafferty, or their attorney offered to pay all the expenses of adjourning and making the sale in pursuance of the adjournment; you offered to pay the fee of adjournment which was
10 one dollar.

Adjourned to June 1st, 1872, at 9 1-2, A. M.

Witness resumed:

I couldn't name the date when I last saw Youngblood's letter referred to yesterday; they are lost or mislaid in some way; I lost the execution once, and found it at last on the Clerk's desk in the court room; I don't recollect that I have seen those letters since I received this notice of amercement, yet I might have seen them; I last had this letter in my office; I don't recollect who was there present; I suppose it was laid upon the rack among the other letters; I
20 am not sure whether I next looked for it before the notice of amercement or afterwards; I know of no means whereby I could find this letter; I refer to the second letter of Mr. Youngblood; I couldn't recollect how long that letter was received after I sent mine; I couldn't tell whether it was received prior to July 17th; can give no more particular account of the contents of the letters of Mr. Youngblood than has already been given by him and myself; between the time of the levy and my putting Suydam in possession I supposed
30 they were selling goods and taking in others, as country produce, &c.

Ques. Did you have any doubt that they were selling goods out of that store between those times?

Ans. I don't think I brought my mind to any doubt about it.

Ques. Is that your only answer.

Ans. I don't understand; I told you I supposed they were selling goods; I don't know what you want; I didn't see them sell any goods.

Ques. Have you any doubt that they were selling goods between the levy and the time you got the second letter from Mr. Youngblood?

Ans. I don't know that I have any right to doubt anything at all about it. 10

I have had a number of sheriff sales advertised in that neighborhood during a year preceding this; some of them were adjourned; I suppose most of them were adjourned; I had a sale in that neighborhood not adjourned at all; I have no recollection of having but two other sales in that neighborhood, of goods and chattels, besides this; one of them was adjourned the other not; the one of the rubber works was adjourned on account of paying some money, perhaps several times; I can't say whether I heard it said in Rocky Hill, after the sale of the store was appointed, that it would not go on; I might have heard it and I might not; I was present at the time of the inventory 'Exhibit No. 3,' was taken; as far as I know it was a fair appraisalment of the value of the goods it contained, all the goods of which the defendants were possessed, to my knowledge; I don't know of their owning any real estate in this county or anywhere else. 20

In chief.

I meant to say the notices of sale were put up six or seven days before the first day appointed for sale; there was a general description of the goods to be sold, in the notices of sale, as store goods; the receipts of the store which I re- 30

ceived during the eight or nine days Mr. Suydam was in possession of the store, amounted to some forty some dollars; I don't recollect the precise amount.

Re-cross-examined:

I don't know whether Mr. Suydam sold for more than that; he might have sold for more than that but I don't think he did; he had all wrote down what he had sold; I had a list of the goods at the time Suydam was put in possession; that list came from Mr. Van Derveer, one of the defend-
 10 ants; I don't know that it was made in my presence; I was not present when it was made; there might have been goods in the store that were not on the list; I have not got it with me; I suppose it is somewhere among my papers; I haven't seen it lately; I don't know that I can produce it; I can't tell whether I can or not; it was a general outline of the store goods—not giving the number of yards in each piece; that was all I had to guide me as to the amount of goods in the store when I put Suydam in possession, ex-
 20 cept my own observation; I was in the store several times; I don't know that I compared the lists when Suydam made return to me, to see if all the goods were there except what he returned or sold.

In chief.

My term of office as sheriff expired last November; I received my documents and papers from the sheriff's office in a few days after that.

Cross-examined:

This notice of amercement I think had been served on me before my term of office expired.

THOMAS CODINGTON.

30 Sworn and subscribed before me, May 31st and Juns 1st, 1872.

I. N. DILTS,
 Supreme Court Commissioner.

LEWIS M. CODINGTON, of the county of Somerset, a witness on behalf of the sheriff, being duly sworn on his oath saith:

I am a son of Sheriff Codington, and was his deputy while he was sheriff; letter dated June 20th, 1871, to P. A. Youngblood, was written by me; to the best of my recollection, father received an answer to it; I don't recollect how soon, probably within a week; to the best of my recollection Mr. Youngblood in that letter directed father to use his judgment in collecting the execution, or some- 10
thing to that effect; I can't remember distinctly about it, but I think he said he had advised with his clients; I don't remember seeing the letter since it was received; I don't know where it is; I was a clerk at the sale.

Cross-examined:

John P. Suydam bought more goods at the sale than any body else; I think he bought more than all others; I don't remember any particulars contained in the letter, further than I have stated; I don't know whether the word judgment was used in the letter or not; I said judgment or some- 20
thing to that effect; I don't know how many times I have read that letter; it is likely I read it more than once; I can't give any of the language of that letter word for word, nor of any other one I received one year ago; nothing particular in this letter farther than I have stated that I now recollect of was in that letter to call my attention to it particularly.

LEWIS M. CODINGTON.

Sworn and subscribed before me, June 1st, A. D. 1872.

I. N. DILTS,

Supreme Court Commissioner. 30

Adjourned to Monday, June 3d, 1872, at 10 1-2 o'clock,
A. M.

JOHN P. SUYDAM, of the county of Somerset, a witness

produced on behalf of the sheriff being duly sworn on his oath saith: I was the person placed by Sheriff Codington in charge of the goods of M. S. and L. R. Vanderveer; I think I had charge of them from seven to nine days; I couldn't tell you exactly; I had charge of all the receipts during that time; I received during that time a little over forty dollars, (\$40); I turned all the money over to the sheriff, every cent of it.

And being cross-examined, says:

I sold all for cash; I took possession on the putting up the
 10 bills for the sale; I have occupied that store stand before
 and since; there is considerable produce comes in, and you
 can give all the credit you choose; more credit makes more
 business; M. S. Van Derveer's son was in with me; he had
 charge of the Post Office; he and I was in alone; part of
 the time they had two desks besides the members of the
 firm; they all of them attended the store; I mean M. S
 and L. Van Derveer and the clerks attended to the store.

In chief.

Luther Van Derveer was engaged in other business be-
 20 sides the store; he was assessor.

JOHN P. SUYDAM.

Sworn and subscribed before me, June 3, 1872.

I. N. DILTS,
 Supreme Court Commissioner.

EXHIBITS.

[EXHIBIT C.]

Dated, SOMERVILLE, July 22d, 1872.

Received 9:26, A. M., PATERSON, N. J., 23.

To P. A. YOUNGBLOOD:

Todd and Rafferty vs. Theodore F. Hoagland,
Luther Van Derveer and others fi. fa. The sale of Van
Derveer store will take place on Tuesday, the twenty-fifth
day of July, at ten A. M.

THOMAS CODINGTON, Sheriff.
31, collect—T. H. W.

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[EXHIBIT D.]

SOMERSET COUNTY SHERIFF'S OFFICE, }
SOMERVILLE, N. J., July 22, 1871. }

P. A. YOUNGBLOOD, Esq.,

Dear Sir:—The sale of the personal property
of M. S. & L. Van Derveer, of Rocky Hill, takes place on
Tuesday, the 25th of July, inst., at 10 o'clock, A. M., under
your execution, and a prior one. The sale was advertised
for to-day, but I neglected to inform you of sale, so I was
obliged to adjourn. If you or your clients cannot attend
please let me know in time for the sale to go on without
waiting for you

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Yours truly,
THOMAS CODINGTON, Sheriff.
per L. C.

[EXHIBIT No. 1.]

SOMERSET COUNTY SHERIFF'S OFFICE, }
SOMERVILLE, N. J., June 20, 1871. }

P. A. YOUNGBLOOD, Esq.:

Dear Sir:—I suppose the Judgement which
you have obtained against Hoagland, and als. was for an old
debt which they contracted while partners in rubber bu-

30

siness. But since that time they have dissolved partnership, and they are all out of the rubber business now. I think that Martin S. & Luther Van Derveer sold to Hoagland & Green, their partners, and Cornelius M. Vreeland, and they took upon themselves the debts and the three last named carried on the business until last winter, at which time judgments, foreclosures, building liens, &c., came upon them so fast that they were obliged to shut up shop for want of capital, and then Hoagland & Green sold out to Vreeland, their partner, and Theodore F. Stryker. I have claims in my hands vs the rubber firm to the amount of twelve or fourteen thousand dollars, and was about to sell the property, when I had an injunction served on me to stay all proceedings against them as some parties had commenced proceedings to throw them into bankruptcy, I do not know what has become of Hoagland, he has no property in this county. Aaron L. Green's residence is in Mercer county, and I think is poor. Martin S. & Luther Van Derveer are now keeping store in Rocky Hill, in this county. They do not own any real estate as I can ascertain. Their store goods are worth about \$2,500 or \$3,000, upon which I hold a levy under an execution ahead of yours of \$2,000. I think if they are left alone they will raise the money. They say all they want is a little time. Of course as fast as they pay I will have to credit it on the first execution, but that will make yours more safe.

THOMAS CODINGTON, Sheriff.
per L. C., Deputy.

[EXHIBIT No. 2.]

30 SOMERSET COUNTY, SS. }

The State of New Jersey to the Sheriff of the County of Somerset, Greeting:

We command you, That of the goods and chattels of Martin S. Van Derveer and Luther Van Derveer, partners, trading under the name, style and firm of M. S. & L. Van Derveer, in your County, you cause to be made a certain debt of two thousand dollars which Cornelius M. Vreeland, lately in our Circuit Court, holden at Bridgewater in and for our said County of Somerset, recovered against the said Martin
40 S. Van Derveer, Luther Van Derveer, partners aforesaid, and also five dollars costs which in our said Court were adjudged

to said Cornelius M. Vreeland for his damages which he sustained as well by occasion of the detention of that debt as for his costs and charges by him about his suit in that behalf expended whereof the said Martin S. Van Derveer and Luther Van Derveer, partners, are convicted, as appears to us of record. And if sufficient goods and chattels of the said Martin S. Van Derveer and Luther Van Derveer, partners as aforesaid, in your County you cannot find whereof to make the debt and damages aforesaid, then and in that case we command you that you cause the whole or the residue, as the case may require, of the debt and damages aforesaid, to be made of the lands, tenements, hereditaments, and real estate in your County, whereof the said Martin S. Van Derveer and Luther Van Derveer were seized on the thirteenth day of April, in the year one thousand eight hundred and seventy-one, or at any time afterwards, in whosoever hands the same may be: And have you those moneys before our Circuit Court aforesaid, at Bridgewater aforesaid, the third Tuesday of September next, to render unto the said Cornelius M. Vreeland for his debt and damages aforesaid; and have you then there this writ.

Witness, Vancleve Dalrymple, Esquire, Judge of our said Court, at Bridgewater aforesaid, the thirteenth day of April, in the year one thousand eight hundred and seventy-one.

WILLIAM ROSS, JR., Clerk.

BARTINE & LONG, Attorneys.

EXHIBIT No. 3.]

STATE OF NEW JERSEY, }
SOMERSET COUNTY, } ss.

On this twenty-second day of July, A. D., 1871, personally appeared before me, the subscriber, the Sheriff of the County of Somerset, Peter Case, Charles Shann and William Holmes, and were severally sworn well and faithfully, honestly and impartially, to appraise the property levied on by virtue of executions issued out of the Somerset Circuit Court and the New Jersey Supreme Court at the suit of Cornelius M. Vreeland, and Joseph C. Todd & Philip Rafferty, against the goods and chattels of Martin S. Van Derveer and Luther Van Derveer, partners, &c., according to the true and intrinsic value thereof. and without reference to what the same

might be supposed to bring at a sale by public vendue under the executions aforesaid.

PETER CASE,
CHARLES SHANN,
WM. HOLMES.

Sworn and subscribed before me this 22d day of July, A. D. 1871.

THOMAS CODINGTON, Sheriff.

SOMERSET CIRCUIT COURT. }
NEW JERSEY SUPREME COURT. }

10 Executions in the hands of Thomas Codington, Sheriff of the County of Somerset.

Cornelius M. Vreeland, and Joseph

C. Todd & Philip Rafferty,

vs.

Martin S. Van Derveer, & Luther

Van Derveer, partners, &c., and

others.

In Case.

Fi fa de bones et tenis.

20 The subscribers, appointed by Thomas Codington, Sheriff of the County of Somerset, to make an inventory and appraisal of the goods and chattels of Martin S. Van Derveer and Luther Van Derveer, partners, &c., levied on by virtue of execution, do now on this twenty-second day of July, A. D., 1871, at the store-house of the said defendants in Rocky Hill, Somerset County, New Jersey, proceed to appraise such property according to the true and intrinsic value thereof, as follows:

6 grey coats,	@ \$3 50,	\$21 00
1 coat,		2 00
3 black coats,	' 3 00,	9 00
1 coat,		2 50
1 coat,		1 50
4 grey coats,	' 3 00,	12 00
7 vests,	' 1 30,	9 10
1 blouse,		1 25
1 pair of pants,		1 50
2 coats,	' 1 00,	2 00
4 coats,	' 2 20,	8 80

Washboards, hoes, forks, &c., behind the door,	6 00
On line over counter,	1 55
Lot of wire,	70
Lot of hardware on back shelf,	45 00
1st shelf—1 clock, lot of chimneys, &c.,	5 00
2d and 3d shelf—tin ware, &c.,	15 00
Space between windows—coffee, spices, lamps, &c.,	20 00
Boxes of tea, coffee, spices, &c.,	20 00
Essences, medicines, &c.,	10 00
Glass and crockery ware,	18 00
13 lamps in window,	2 75
Contents under shelves,	6 00
Contents under counter,	8 00
Baskets, boxes, &c., under counter,	3 00
18 wooden rakes, @ 12,	2 16
2 oats forks, ‘ 75,	1 50
4 scoops, ‘ 75,	3 00
13 shovels, ‘ 80,	10 40
5 hoes, ‘ 30,	1 50
10 forks, ‘ 40,	4 00
2 iron rakes, ‘ 20,	40
1 briar scythe,	30
7 washboards, @ 12,	84
Lot of axe and fork handles, &c.,	2 50
21 brooms, @ 25,	5 25
1 scuttle and lot of shovels,	2 50
Lot of trays and measures,	3 50
4 looking glasses,	1 50
Ox baskets,	1 00
4 mop handles,	50
Lot of crockery ware,	2 00
Contents in small room,	1 00
Lot of earthen ware,	10 00
Coffee mill,	1 50
Lot of crockery ware, &c.,	8 00
Boxes of tea and contents,	4 00
Lot of glass and spices,	10 00
Stove and pipe,	5 00
Barrels and boxes of lamp chimneys, &c.,	17 00
Baskets, door mats, &c.,	2 00
5 scuttles, @ 50,	2 50
Rags, bags, boxes, &c.,	15 00
3 churns and 3 brooms,	4 00
Lot of earthen ware,	5 00
Lot of stone ware, &c.,	20 00
3 molasses barrels and contents,	3 00
1 rope,	2 50
Pots and firkins of butter, lard, pork, &c.,	5 00
Contents in back cellar,	7 00
Barrel and contents of linseed oil,	14 00
‘ ‘ ‘ ‘ ‘	2 50

About 25 gallons of vinegar,	5 00
3 empty oil barrels,	5 00
Lot of ropes,	5 00
Box of coal,	1 25
Box of salt,	75
2 rakes,	25
1½ sacks of salt,	3 00
Lot of plug tobacco,	3 50
Box and contents of neats foot oil,	2 50
4 cans and measures,	1 75
Tallow, codfish and pail,	1 00
Contents in small cellar,	1 00
Weights and measures in cellar,	1 00
1 platform scales,	12 00
3 scales and weights,	7 00
4 lamps,	2 50
1 tobacco cutter,	25
Contents in store,	2 00
1 horse, (bay), ¹	160 00
1 buggy,	30 00
1 set single harness,	7 00

\$1,828 14

PETER CASE,
 CHARLES SHANN,
 WM. HOLMES.

New Jersey Supreme Court.

NOVEMBER TERM, 1873.

Joseph Todd and Philip C. Rafferty,
partners, &c.,

vs.

Theodore F. Hoagland, Luther
VanDerveer, Martin S. Van Der-
veer and Aaron L. Green.

In Case.

On motion to amerce the Sheriff of Somerset County :

Argued at the June Term 1873, before Bedle, Woodhull
and Scudder, Justices, by A. V. Van Fleet for plaintiffs, and
A. A. Clark, for the Sheriff.

10 BEDLE, J. The sheriff is bound to exercise reasonable
care and judgment in the management of his sales, so that
the property levied on may be sold to the best advantage to
make the money, subject of course, to all the requirements
of the statutes affecting sheriff's sales. If there is a failure
of bidders, or the circumstances of the sale are such as to
show that the property will be sold for a price unreasonably
inadequate to what it ought to bring at a sheriff's sale, it is
the duty of the sheriff, unless otherwise ordered, and where
the creditor is likely to be benefited by it, to adjourn the
sale for another opportunity. His duty is to make the money
on the execution, if by fair judgment and skill it can be
done according to the modes provided by the law. His dis-
cretion should be liberally considered in the absence of bad
faith, yet the sheriff is responsible for a clear neglect of its

proper exercise according to the measure stated. (Shearman on negligence § 352 ; Addison on Torts, 626 ; Crocker on Sheriffs, 488 ; Wright vs. Child, L. R., 1 Exch. 354).

Where there are two or more executions, the same principles will apply having a due regard to the interests of all the plaintiffs, and so as to make the money for all, if can be done.

In the case before us the *fi. fa.* came to the hands of the sheriff, June 1st, 1871, and a levy was made June 3rd, upon a stock of goods in a store kept by the two defendants Vanderveers, at Rocky Hill. The plaintiffs and their attorney resided at Paterson. The sheriff previous to June 1st, had made a levy on the same goods under an execution on a judgment confessed by the Vanderveers to one Cornelius M. Vreeland for \$2,000 debt, and five dollars costs. The amount of the plaintiffs execution was \$588 85, including debt and costs. At the date of the plaintiffs' levy, the amount of the two executions besides sheriff's fees, was about \$2612. The stock of goods levied on had cost about \$4,000. From June 3d, to July 17th following, the sheriff allowed the two defendants to continue their business as usual, he not receiving any of the proceeds of their sales. On July 17th, he took possession by appointing John P. Suydam, his deputy, and leaving him in charge of the store, he to receive the money for what sales were made and to account to the sheriff for it. Suydam then was the owner of, or had control of the Vreeland judgment, and from the testimony was evidently friendly to the Van Derveers, the sheriff understanding that fact. The sheriff advertised the sale for July 22d, but having neglected to inform Todd & Rafferty or their attorney, he adjourned it to July 25th; after that, on July 22d, he telegraphed to plaintiff's attorney at Paterson that the sale would take place on

the 25th, but the message did not reach there until the morning of the 23d. On the 24th the plaintiff, Todd, went to Somerville, reaching there at twelve o'clock, but not being able to find the sheriff till five o'clock that afternoon when he requested the sheriff to postpone the sale on account of a want of sufficient notice to him so that he could get competent persons to examine the goods and ascertain their value. The sheriff refused; Todd remained there over night and attended at the place of sale, having that morning again requested the sheriff to postpone for a few days, Todd offering to pay the expenses of advertising again, and also that he would give the sale all the publicity possible by hand bills. The sheriff again declined to adjourn and the sale went on. The bidders were few and Suydam bought the most of the goods. It is clear that an adjournment for a short time would not have prejudiced Suydam in making his money, if that was his only purpose, and it is more than probable from the evidence that it would have enabled Todd & Rafferty to have realized part if not the whole of their claims. The goods were needlessly sacrificed having sold for not more than one half of their cost, and the sale appears to have been conducted in the interest of the first execution creditor if not the defendants, and without a due regard to the plaintiffs in this case. The sheriff should have adjourned the sale as requested, as there was fair reason to believe that part if not the whole could have been made on the second execution and when there was no risk of any loss to the first execution creditor by the delay. This duty was also more imperative from the fact that without any authority from Todd & Rafferty or their attorney, the sheriff had allowed the Vanderveers to continue their trade without interference, and without giving any information of the condition of the execution till June 20th, when he wrote to plaintiffs' attorney of the fact of the first execution and gave his opinion that the Vanderveers would pay if left alone,

they needing only a little time, and to which the attorney replied within a week afterwards "do the best you can for my clients." From this the sheriff knew that the plaintiffs were depending upon his judgment as to the time of enforcing the levy; and when pressed under the first execution, or when he concluded to sell, he should have given the plaintiffs a fair chance to obtain their money from the sale. How far that reply of the attorney may relieve the sheriff from responsibility for the reduction of the stock between the levy and the time he took possession less ——— the amount that it was replenished by purchases need not be determined; it is sufficient however, to state that it could not relieve the sheriff from his official duty in regard to the conduct or management of the sale. In that respect by refusing the adjournment under the circumstances he failed in his duty 10

Another point is also made, that the sheriff did not comply with the statute in filing a just and true inventory. The *fi. fa.* was returnable at the June term, 1871, but was not returned when this motion to amerce was made; since then it has been produced with the return *nulla bona*. There accompanies the writ a general levy upon the goods, but not of sufficient particularity to amount to the inventory required by the law. Coxe 136, Watson vs. Hael. lb. 168, Hustick vs. Allen, 6th Hal 218, Lloyd vs. Wyck-off. That levy seems to have been kept by the sheriff in his docket and must have been annexed to the writ during the progress of these present proceedings. The inventory would have been immaterial to the plaintiff had it been entirely clear that nothing could have been made under the second execution, but when it did not so appear, it was the duty of the sheriff to make his inventory, for it is an advantage to and the right of subsequent judgment creditors, to know with reasonable accuracy what property there is from which 30

the money may possibly be made. The mere fact of the non-return of the writ is not sufficient to justify an amercement, yet if an inventory should be filed, there being goods upon which it might operate with effect, the fact that there is none filed is ground for amercement. In this case the sheriff was bound to return his writ with the inventory unless that duty was dispensed with by the plaintiffs' attorney. The only fact bearing on that claimed by the sheriff is the letter of the attorney, and I cannot see how that with a liberal construction can have more effect than to permit the sheriff to exercise his discretion (not the plaintiffs) as to the propriety of an immediate sale and perhaps as to taking actual possession of the goods. Beyond that it was the duty of the sheriff to perfect his levy and furnish the full evidence of it by the inventory required by the statute.

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The sheriff must be amerced in the amount of the plaintiffs' execution with costs.

(A true copy.)

BENJ. F. LEE, Clerk.

New Jersey Court of Errors and Appeals.

Thomas Codington

vs.

Joseph C. Todd who has survived
Philip Rafferty, dec'd.

In Error.

Afterwards that is to say on the _____ day of
eighteen hundred and seventy-four, in the
Court of Errors and Appeals comes the said Thomas Cod-
ington by Alvah A. Clark, his attorney, and says that in
the record and proceedings aforesaid and in the judgment
aforesaid against the said Thomas Codington, there is man-
ifest error in this to wit: that the said Supreme Court ren-
dered judgment of amercement against the said Thomas
Codington and in favor of the said Joseph C. Todd and
Philip Rafferty, when by the laws of this State the said 10
Court should upon and in the said proceedings have render-
ed judgment in favor of the said Thomas Codington and
against the said Joseph C. Todd and Philip Rafferty with
costs. Therefore the said Thomas Codington prays that
the judgment aforesaid by reason of the error aforesaid and
of other errors appearing in the record and proceedings may
be recovered, annulled and for nothing solden, and that the
said Thomas Codington may be restored to all things he
has lost on occasion of the said judgment, and that the said
Joseph C. Todd may rejoin to the said errors. 20

A. A. CLARK,
Attorney of Thomas Codington.

New Jersey Court of Errors and Appeals.

Joseph C. Todd who has survived
Philip Rafferty, dec'd, Defend-
ants in Error,

vs.

Thomas Codington.

In Error.

To Sup. Ct. of N. J.

And hereupon afterwards on the _____ day of
A. D., eighteen hundred and seventy-four,
the said Joseph C. Todd, surviving Philip Rafferty, dec'd,
late partners trading, &c., as Todd & Rafferty by John
Schomp, his attorney, comes into Court here and says that
there is no error in the record and proceedings aforesaid, or
in giving the judgment aforesaid, and he prays that said
Court of Errors and Appeals now here may proceed to
examine as well the record and proceedings aforesaid, as the
10 matter aforesaid assigned for error, and that the judgment
aforesaid given may in all things be affirmed, &c.

JOHN SCHOMP.

Att'y of Joseph C. Todd, surviving, &c.,
Defendant in Error.







