

by the defendant Caldbick under execution, to set aside the sale and for damages.

The defendant Pierce served the defendant Caldbick with a third party notice; and Reamsbottom and Edwards, execution creditors of the plaintiff, who had also been made third parties, were, upon their written consent filed, added, at the trial, as co-plaintiffs.

The action was tried without a jury at Toronto.

Gideon Grant and P. E. F. Smily, for the original plaintiffs.

McGregor Young, K.C., for the added plaintiffs.

H. M. Mowat, K.C., and F. L. Smiley, for the defendant Caldbick.

J. Y. Murdoch, for the defendant Pierce.

CLUTE, J., in a written judgment, said that the main objection to the sale was, that the sheriff advertised, in addition to certain logs in the water, about 300 logs in the woods. As a matter of fact, there were more than 4,000 logs in the woods. At the sale, the sheriff was asked as to the number of logs in the woods. He did not know how many there were; he had made inquiry and was informed that there were about 300; and, without further inquiry or knowledge, and without going to the woods, some 4 or 5 miles away, he advertised them as "about 300." At the sale, he said that he was selling whatever the Maple Leaf Lumber Company had there—300 more or less; if there were less, the buyer would pay for 300; if more, he would get them; and, on this understanding by the bidders, the defendant Pierce became the purchaser of the logs in boom at the mill, about 900, and the logs in the woods, for \$410. The sale was subject to \$253.44 for unpaid Government dues.

The logs at the mill were sawn up and sold by the defendant Pierce, and he realised from their sale more than sufficient to recoup him for what he paid for the whole lot. He afterwards undertook to have the logs in the woods taken out; and at the time of the trial they were lying in the water in the boom near the mill.

What took place amounted to a seizure of the logs in the woods: *Gladstone v. Padwick* (1871), L.R. 6 Ex. 203; and the property passed by the sale: *Halsbury's Laws of England*, vol. 14, pp. 54, 55, 56; 17 Cyc. 1087; *Osborne v. Kerr* (1859), 17 U.C.R. 134, 141; *McDonald v. Cameron* (1867), 13 Gr. 84; and other cases.

The sheriff did not exercise reasonable care to ascertain the quantity of logs, and should be made liable for any damages