

"(4) That the said Sheriff do pay the moneys received from the said sale directly to the plaintiff, without holding the same pursuant to the Creditors Relief Act or any other Act."

The relief sought by the statement of claim was too wide. It would, on its face, purport to preclude other creditors from asserting any claim to the proceeds of the household goods and chattels referred to in the pleading; though, being *res inter alios acta*, it would not be effective to that end. The other creditors were not parties to this proceeding, and had no opportunity of asserting their right, if any, to share in the proceeds, and such an opportunity ought to be afforded them.

There should be a judgment granting the first, second, and third prayers of the statement of claim; the fourth prayer of the statement of claim should be refused; the proceeds of the sale, after deducting expenses of sale, should be paid by the receiver into Court to the credit of this action; and it should be referred to the Master to inquire and report the parties entitled to share in the fund.

Further directions and costs should be reserved to be disposed of by a Judge in Chambers.

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FALCONBRIDGE, C.J.K.B.

NOVEMBER 19TH, 1919.

MISNER v. TYERS.

*Fire—Action for Damages for Injury to Plaintiff's Property by Fire Alleged to have Spread from Fire Set out by Defendant—Evidence—Onus—Negligence—Proof of Cause of Fire—Demeanour of Witnesses—Delay in Bringing Action—Findings of Trial Judge.*

Action to recover damages for destruction of the plaintiff's property by fire said to have spread to the plaintiff's land from fires negligently set out by the defendant.

The action was tried without a jury at Parry Sound.

W. L. Haight, for the plaintiff.

W. E. Raney, K.C., and H. E. Stone, for the defendant.

FALCONBRIDGE, C.J.K.B., in a written judgment, said that the defendant denied that any fire set out by him spread to the plaintiff's land or caused him any damage, and alleged that, at the time mentioned in the statement of claim, large bush-fires were raging throughout the part of the country in which the lands