

## Province of Nova Scotia.

## SUPREME COURT.

McDonald, C. J.] LISCOMB FALLS MINING CO. v. BISHOP [August 13.

*Mining property—Contract to erect mills—Action on—Removal without injury to freehold—Liability of sheriff for wrongful seizure of property not liable to execution.*

Plaintiffs who were holders of a number of prospecting gold licenses in G. county applied to the Crown Lands Department for a grant covering the whole or a part of the lands covered by the prospecting license. They paid into the department the sum required by law and their application after being accepted was referred to the surveyor of the department in the usual course, but no grant had actually passed at the time of the sale which gave rise to the action. Plaintiffs erected a mill on the land included in their application and employed the defendant B. to erect the necessary buildings and plant. For the debt accruing to him in this connection B. recovered judgements against plaintiffs and issued execution with instructions to the sheriff to levy on the goods and chattles of the plaintiffs for the sum of \$300,75. Under this execution the sheriff levied on the mill, machinery, and other personal property found on the mining property and sold the same. The action was instituted by plaintiffs against the sheriff, and B. and the purchasers at the sheriff's sale alleging that the mill and its appurtenances so sold were not personal property at the time of the sale but were attached to the soil and part of the real estate and could not be sold under B's. execution. The property, which was sold *en bloc*, included a considerable amount of property which was clearly liable to seizure under the execution and the instructions indorsed thereon.

Plaintiffs claimed, (a) a declaration that the sale was void and to have the same set aside; (b) an order for the return of the personal property and damages for its detention; (c) damages for the trespass to the real estate and the personal property and for the conversion of said property. The evidence as to whether the mill, buildings, machinery, etc. could be removed without damage to the freehold was contradictory, but the learned trial judge found that it could be removed without such injury.

*Held*, that all claims made by plaintiffs must be refused and judgment entered in favour of defendants with costs.

*Semble*, that if the sheriff in taking property that was liable to be taken under execution at the same time seized and sold other property that was not liable to be so taken, without instructions, or in violation of his instructions, the remedy would be against the sheriff personally and not against the execution creditor.

*Smith v. Keal* 9 Q.B.D., 354, referred to.

*H. A. Lovett* for plaintiffs. *W. A. Henry* for defendants.