

FALCONBRIDGE, C.J.

SEPTEMBER 23RD, 1903.

CHAMBERS.

## RE BLACK EAGLE MINING CO.

*Sheriff—Right to Poundage—Goods Advertised for Sale but not Sold—Money “made” by Sheriff—Tariff C., Item 39—Possession Money—Amount of.*

Appeal by the sheriff of Rainy River district from an order of the local Judge at Rat Portage. Some twelve executions against the Black Eagle Mining Company were placed in the sheriff's hands, and he seized personal property belonging to the company. A portion of this was sold for \$2,200, and the right to poundage in respect to this amount was not disputed. He advertised other property for sale, but, pending an application for a winding-up order, he was directed to stay and did stay the sale until the 30th March. No settlement having been arrived at, the property was again advertised for sale for the 4th April. On the morning of that date the solicitor for the company came to the sheriff, and, in order to prevent the sale being proceeded with paid to him the balance due upon the executions (less the sheriff's fees), amounting to \$16,000, or thereabouts. The sheriff claimed poundage upon this amount, which claim was disputed, and the defendants brought the matter before the local Judge under Rule 1192. The Judge, however, did not act upon this Rule, because he held that the money paid to the sheriff was not “made” within the meaning of item 39 of tariff C. attached to the Consolidated Rules, and that therefore the sheriff was only entitled to such allowance as might be made by the Judge under Rule 1190. The sheriff appealed from this decision. The company also cross-appealed on the ground that the local Judge should not have allowed more than \$1.25 per day possession money.

W. M. Douglas, K.C., for the sheriff, contended that the money paid to the sheriff under the executions was “made” within the meaning of the tariff, citing *Thomas v. Cotton*, 12 U. C. R. 148; *Consolidated Bank of Bickford*, 7 P. R. 172; *Morrison v. Taylor*, 9 P. R. 390; and other cases. The old statute required the money to be “levied and made,” but even in such cases the statute would be satisfied where the money was paid to the sheriff after the property had been seized and advertised for sale.

N. W. Rowell, K.C., for the company, contended that the sheriff was not entitled to poundage unless he levied the