

to be taken as dissenting from the view expressed in *Marshall v. Green*, but rather as distinguishing the case of a building from the case of a tree growing upon the land.

*Marshall v. Green*, 1 C. P. D. 35, to which he refers, is cited with unqualified approval in *Kauri Timber Co. v. Commissioner of Taxes*, [1913] A. C. 771.

If this building is to be regarded as land, then, according to the decision in *Cameron v. Bradbury*, 9 Grant, 67, and *Gibbons v. Cozens*, 29 O. R. 356, by re-selling, the vendor has precluded himself from afterwards proceeding upon his judgment for the balance of the claim.

I do not think that this precludes the enforcing of the judgment for the costs thereby awarded. These costs are not like interest, accessory to the demand, but are damages awarded to compensate for the trouble and expense to which the plaintiff is put by the litigation. They are a new and independent cause of action.

If I am right in these findings, it follows that the execution in respect of the instalments should be directed to be withdrawn, owing to the re-sale of the mill by the plaintiff, and that the executions with respect to costs should be declared to remain in force.

The defendants make a further contention which requires to be carefully examined. At the time the claimant acquired title, there were only the earlier executions in the sheriff's hands, and the issue was confined to these executions. I quite agree with Mr. Laidlaw's contention that the interpleader order was intended to be, and is, wide enough to allow these creditors to come in and participate with their executions; but the point is that the judgment of the judicial committee merely determines the invalidity of the claimants' title as to the executions in the hands of the sheriff at the time that title was acquired. The head-note states accurately the ground of decision:

"Where execution is levied upon timber cut by an assignee of the licensee under an assignment made subsequent to the issue of the writ, the levy is valid unless it is shewn that the assignee acquired his title in good faith and for valuable consideration, without notice of the execution, and has paid his purchase money."

The concluding paragraph of the reasons for judgment is: "In the result, their lordships are of opinion that the