

The ground of the claim and seizure was that the Respondent had cut this Timber upon her lands.

On the eighteenth of the same month of July the Bailiff employed by Mary Barrows proceeded with the Sheriff's warrant to the place where the Timber lay, at some distance above Quebec, for the purpose of seizing it.—The Bailiff offered the Respondent to nominate him Guardian of the Timber and to leave it in his care and custody, which the Respondent refused.

The Bailiff then nominated one Wiseman, who resided near the spot, Guardian of the Timber, and thus acquitted himself of his duty.

Early on the succeeding morning a violent storm arose, which broke the fastenings of the raft, to which a guardian had been so appointed, and drove it from its moorings. The weight of the raft and its unusual height above the level of the water gave to the wind greater effect.

Upon this accident happening, the Appellant used every exertion to recover the timber and laid out the large sum of two hundred and fifty pounds, in recovering a considerable portion of it.

On the twentieth of July, (one day after the raft had been driven from its moorings and carried down the river) the Respondent notified the Appellant to take great care thereof, employ men, &c. and it is this notification which the Respondent refers to in his special answers.—It will be recollected that the seizure took place on the evening of the eighteenth that the Respondent refused to take charge of the raft or to assist in keeping it, and that between the evening of the eighteenth and early in the morning of the nineteenth when the raft went adrift, it could not be expected that the Appellant could take all the precautions, which an experienced lumber dealer might have used, or could even in this short interval procure the men necessary for the purpose.—The Respondent, feeling the weakness of his cause on this point, deemed it necessary to make the protest of the twentieth, which is drawn up with more ingenuity than honesty, in a way to produce an impression that the Timber was still in the possession of the Appellant, without directly stating that to be the fact, which the Respondent knew could be shown to be otherwise.

Upon the return of the Writ of *Saisie Revendication*, Mary Barrows and the Respondent confederated for the purpose of throwing the loss of this Timber upon the only person who was entirely innocent in the transaction, viz. the present Appellant. A Consent Rule was drawn up, whereby Mary Barrows discontinued her suit, and the Appellant was ordered to deliver up the Timber seized to the Respondent.—It is hardly necessary to observe that this order did not operate as a final Judgment against the Appellant, and left him at full liberty to shew any good Cause which he might have for not delivering up either the whole or any part of the Timber in question.

From the above plain statement of facts it is apparent, that if it were even taken as a principle that the Sheriff is bound upon a Seizure, under a Writ of *Saisie Revendication*, at his own costs to employ men and manage the effects seized, every thing was done by the present Appellant, which the time and circumstances permitted; That