

gularly to sell under the execution the effects of a liquor business belonging to the execution debtor, placed his bailiff in possession of the business itself with directions to take over the daily receipts thereof as a going concern, and where such receipts were actually turned over by the cashier every day to the sheriff, the legal construction of the daily taking over of the money by the sheriff is that each such taking over was a levy thereon under the execution.

2. Where the sheriff seizes, under an execution, certain moneys belonging to the execution debtor, the execution creditor thereby acquires a lien upon the moneys so received, and such lien is protected on the execution debtor subsequently dying insolvent, and the administratrix of his estate is not entitled to delivery up of the moneys so seized for distribution *pari passu* under sec. 52 Trustee Act (Ont.), the saving clause of which section declares, in effect, that the statutory direction for distribution *pari passu* shall not prejudice "any lien existing in the lifetime of the debtor on any of his real or personal property." Trustee Act, 1 Geo. V. (Ont.) ch. 26, sec. 52, construed.

W. R. Smyth, K.C., for the Dominion Brewery. H. E. Rose, K.C., for the administratrix.

Province of Nova Scotia.

SUPREME COURT.

[Dec. 14, 1912.]

MCDONALD v. THE CITY OF SYDNEY.

Evidence—Presumption as to negligence of municipal corporation—Unguarded excavation in highway—Absence of direct evidence.

In the absence of direct evidence to shew that the deceased walked into the unprotected portion of an excavation in the street, which was being made by the municipal corporation and which was left with a partial protection only so that as to the remainder it constituted a dangerous trap, an inference to that effect may be drawn from the position in which his body was found and from the fact that deceased had left his house