

satisfied that the case was one which should go to trial, there was no reason for coming to a different conclusion.

*Semble*, that as under the present practice there is difficulty in striking out a portion of a defence, it should be done, only under special circumstances.

TOWNSHEND, J., dissented, but chiefly on the facts.

Townshend, Q.C., in support of appeal. *W. E. Fulton*, contra.

Full Court.]

MCKAY & HARRIS.

[March 14.

*O. 40 R. 31—Seizure and sale of equity of redemption in goods under action against sheriff dismissed—Necessity of demand and refusal to render sheriff liable as wrong-doer—Duty of sheriff with respect to custody of goods.*

By O. 40 R. 31, under an execution the sheriff may seize and sell the interest or equity of redemption in any goods of the party against whom the execution was issued, and such sale shall convey whatever interest the mortgagor had in such goods and chattels at the time of the delivery of the writ to the sheriff. The defendant sheriff sent his deputy to the premises of the judgment debtor, whose stock was covered by a bill of sale held by plaintiff, with instructions to levy for the amount over the bill of sale. The deputy merely went to the premises and made a list of the articles and notified the judgment debtor that he had levied, and the sheriff without taking any further action, and without removing the goods or putting anyone in charge, advertised for sale all the right and interest of the judgment debtor.

*Held*, that the sheriff had not exceeded his powers under the order, and that no action would lie against him by the holder of the bill of sale.

Per WEATHERBE, J., RITCHIE, J., concurring. The sheriff would have been justified in putting someone in charge of the goods, pending the sale, and that he had not gone as far as the order would have authorized him in doing.

*Quere*, having failed to do so, whether he would not have been personally liable, in case of the removal of the goods.

Per MENZIES, J., HENRY, J., concurring. A demand and refusal, or something that would be equivalent thereto, such as notice forbidding the sale and evidence of some act or conduct in disregard of such notice, would be necessary to render the sheriff liable as a wrongdoer as against the holder of the bill of sale.

*H. Melish*, and *E. M. McDonald*, for appellant. *H. McInnes*, and *J. A. Ross*, for respondent.