

*Howell, K.C., and Minty, for plaintiff. Bradshaw, for defendant.*

Full Court.] MASSEY-HARRIS CO. v. MOLLOND. [June 9.

*Sheriff—Negligence of bailiff—Liability for loss of stolen money—Satisfaction of judgment—Sale under fi. fa. without notice or advertisement.*

Judgment of RICHARDS, J., noted vol. 40, p. 789, affirmed with costs.

*Held, also, 1.* The provision of section 21 of the Executions Act, R.S.M. 1902, c. 58, requiring at least eight days' public notice in writing of the time and place of sale under a fi. fa. goods, is only directory and that a sale should not be held invalid for want of such notice, if there was otherwise a sufficient notice to insure a successful public sale. As a matter of fact the chance of good prices being obtained was increased on account of the buyers not knowing that the sale was a forced one under execution. That provision is for the benefit of the debtor, and neither the plaintiffs nor the sheriff can take advantage of an omission of the bailiff to get the sale declared void when no damage of any kind resulted from the omission.

2. Only the mortgagees could object to the auctioneer selling the goods themselves or claim that only the defendant's equity of redemption therein could be sold under the fi. fa.

3. If the sheriff sells otherwise than for ready money he is responsible for the collection of the cash, but that does not render the sale invalid.

4. There being no other executions in the sheriff's hands against the defendant, neither the plaintiffs nor the sheriff could take advantage of the sheriff's neglect to observe the requirements of section 25 of the Executions Act as to this rateable distribution of the money realized by the bailiff.

5. There having been a seizure by the bailiff under the fi. fa. before the sale, and no abandonment afterwards, the sale must be considered to have been made under the writ and not under order of the executors.

*Aibins, K.C., for plaintiffs and sheriff. Wilson, for the executors.*