

MIDDLETON, J., IN CHAMBERS.

DECEMBER 2ND, 1916.

*MAPLE LEAF LUMBER CO. v. CALDBICK AND PIERCE.

Security for Costs—Sheriff Executing Writ of Fi. Fa.—Person Fulfilling Public Duty—Public Authorities Protection Act, R.S.O. 1914 ch. 89, sec. 16.

Appeal by the plaintiffs from an order of the Master in Chambers requiring the plaintiffs to give security for the costs of the action of the defendant Caldbick, the Sheriff of the District of Temiskaming.

P. E. F. Smily, for the plaintiffs.

H. M. Mowat, K.C., for the defendant Caldbick.

MIDDLETON, J., in a written judgment, said that the action was for damages and to set aside a sale under execution; and that the sole question argued was the right of the defendant sheriff to security for costs under sec. 16 of the Public Authorities Protection Act, R.S.O. 1914 ch. 89, giving protection to any person sued "for any act done in pursuance or execution or intended execution . . . of any public duty."

It was determined in *Creighton v. Sweetland* (1898), 18 P.R. 180, that a sheriff executing a writ of fi. fa. is not an officer or person fulfilling a public duty within the meaning of R.S.O. 1897 ch. 89, sec. 1.

By a statute passed in 1899 (62 Vict. (2) ch. 7, sec. 3), it was declared that "a sheriff shall be deemed an officer" within the meaning of the Act—but the new Act did not interfere with the decision in the *Sweetland* case, for it did not declare that in the execution of a writ of fi. fa. the sheriff should be deemed to fulfil a public duty. It was never held in any reported decision that this amendment had any other than its plain effect, i.e., that in the discharge of his public duties, as distinct from his private duties, the sheriff was entitled to invoke the Act.

In the statute as now revised, R.S.O. 1914 ch. 89, a sheriff acting under an execution is to be deemed to be acting in the discharge of a public duty for the purposes of sec. 13 (see sub-sec. 4), so that any action must be brought within six months after the act complained of, but he is not afforded the further protection of security for costs under sec. 16.

Appeal allowed and motion for security for costs dismissed with costs to the plaintiffs against the defendant Caldbick in any event of the action.