

*Held*, allowing the appeal, that where property alleged to be part of the equipment of a ship is in the possession of a receiver appointed in an action in rem in the Exchequer Court to enforce a mortgage of the ship such property cannot be seized by a sheriff under a writ of fieri facias issued on a judgment recovered against the registered owner of the ship in the Supreme Court; and the Supreme Court has no jurisdiction on the application of the sheriff to grant an order directing the trial of an interpleader issue between the mortgagees and the judgment creditors.

*Seemle*, that the sheriff, finding the marshal in possession, should have made a return of nulla bona and the execution creditor should then have applied in the Admiralty proceedings to rank as a judgment creditor.

*G. A. S. Potts* (*Gilnour* with him) for appellants. *Wilson*, Q.C., for respondent.

Killam, J.]

DAY v. RUTLEDGE.

[May 26.

*Costs—Practice—Execution after notice of appeal—Sheriff's poundage—Making order of Supreme Court a judgment of the court below.*

The judgment in favour of the plaintiff having been affirmed by the full court, his costs were taxed and executions issued and placed in the sheriff's hands, notwithstanding defendant gave notice of his intention to appeal to the Supreme Court. A certificate of the judgment was also registered. Defendant having afterwards paid the amount of the taxed costs into court as part of the security for the appeal, obtained an order setting aside the executions, but reserving the question of the sheriff's fees. On the dismissal of the appeal to the Supreme Court, plaintiff caused the judgment of that court to be entered into the judgment book of this court on a judge's fiat, and applied for an order for payment of the costs of the executions of the certificate of judgment, and of making the order of the Supreme Court a judgment of this court, also for an allowance of poundage to the sheriff on the executions.

*Held*, 1. Following *Clarke v. Creighton*, 14 P.R. 34, that plaintiff was justified under Rule 683 of the Queen's Bench Act, 1895, in issuing the executions and certificate of judgment when he did, and was therefore entitled to costs of same.

2. In view of s. 48 of the Supreme Court Act, R.S.C., c. 135, inasmuch as the order setting aside the executions did not provide for any poundage or reserve the question, and as no money was realized on the executions, no order for poundage should now be made.

3. It is doubtful whether it is necessary to make the judgment of the Supreme Court an order of this court when the appeal is simply dismissed; and at any rate the costs of an application for that purpose should not be given when not so ordered upon the application.

*Mulock*, Q.C., for plaintiff. *Wilson*, *fc.* defendant.