

C. P.]

HALL v. GOSLBE.

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## UPPER CANADA REPORTS.

## COMMON PLEAS.

(Reported by S. J. VANCOUGHNET, Esq., M.A., Barrister-at-Law, and Reporter to the Court.)

## HALL v. GOSLBE.

*Fi. fa. lands—Seizure—Expiration of writ—Abandonment—Return.*

The expiration of a *fi. fa.* lands before the intended day of sale, which has been regularly advertised, does not cause a cessation of the seizure, which the commencement of the advertisement is.

In this case, where lands had been advertised under other writs, the plaintiff's writ of *fi. fa.* being at the time in the sheriff's hands,—*Held*, that although the sale under the writs so advertised neither took place nor was adjourned, yet that the plaintiff's writ operated upon the lands under the seizure by such advertisement, and that the return of "lands on hand" to this writ after its expiry was, under the circumstances, the only return which could have been made; and further, that the sheriff might have proceeded at the plaintiff's suit without a *venditioni exponas* to sell the lands then in his hands.

*Held*, also, that the non-adjournment of the sale advertised for 12th September, 1863 (which did not take place), and the publication of an apparently independent notice in the following June, under the plaintiff's writ of *ven. ex.*, did not necessarily and conclusively constitute an abandonment of the seizure, which had been lawfully made under the former writ; although no positive rule could be laid down as to what would constitute an abandonment of lands once seized, this being a matter of fact which must rest very much upon intention.

[C. P., M. T., 1864.]

C. S. Patterson, on behalf of the sheriff of the United Counties of Northumberland and Durham, obtained a rule on the plaintiff and defendants to shew cause why the rule requiring the sheriff to return the writ of *venditioni exponas* and *feri facias* for the residue should not be set aside, either in the whole or so far as the same relates to the *venditioni exponas*, on the ground that no lands were seized or were seizable thereunder by the sheriff; that no lands were seized by sheriff Fortune under the original writ of *fi. fa.*, or if seized the same did not come into the hands of the present sheriff; and that the writ being returnable only after execution thereof, and not having been executed, the sheriff could not be ruled to return it.

The facts agreed upon between the plaintiff and the sheriff, and upon which the rule was granted, were in effect, as follow: the *fi. fa.* against lands in this suit was issued on the 30th of August, 1861, and delivered to sheriff Fortune on the following day, and was renewed on the 14th August, 1862: the return to it was made by sheriff Fortune on the 29th of August, 1863, "lands on hand": the *ven. ex.* and *fi. fa.* against lands for residue was issued on the 10th of November, 1863, and was received by sheriff Fortune on the 16th of that month.

There were two writs against lands, at the suit of the Commercial Bank, issued on the 23rd July, 1861, received by sheriff Fortune on the 25th of the same month, renewed on the 27th of June, 1862, and returned by sheriff Fortune, "no lands," on 3rd Sept., 1863, one of which was against both these defendants, the other against one of them only.

On the 5th September, 1863, the Commercial Bank delivered to sheriff Fortune two writs of *alias fi. fa.* against lands, which were renewed on the 30th of August, 1864.

Before the return of "lands on hand" there had been no advertisement of lands by the sheriff in which this cause was named, but an advertisement purporting to be under the two writs of the Commercial Bank, was inserted in the "*Cobourg Star*," a newspaper published in Cobourg, on the 17th of June, 1863, giving notice that the defendant's lands would be sold on the 12th of September, 1863. This advertisement was continued weekly in the "*Cobourg Star*" until the 5th of September, 1863, and it was published in the *Canada Gazette* on the 25th of July, 1863, and continued until the 12th of September following. No sale, or attempt at sale was made on the 12th of September, 1863, in pursuance of the advertisement, nor was the sale adjourned to any future day.

Sheriff Fortune was superseded in his office on the 9th of March, 1864: Sheriff Waddell, the present applicant, was appointed sheriff on the 10th of March, 1864.

The plaintiff's writ of *ven. ex.* and *fi. fa.* residue was transferred by sheriff Fortune to the present sheriff on the 9th May, 1864, without any return of what had been done thereon, together with the two writs of *alias fi. fa.* at the suit of the Commercial Bank.

The plaintiff's attorney in this case sent to sheriff Waddell on the 30th of May, 1864, a list of lands to be advertised under the writ of *ven. ex.*, with money to pay for the advertisements; upon which the sheriff inserted in the *Canada Gazette*, on the 18th June, 1864, and also in the "*Cobourg Star*," the said lands, being those before advertised at the suit of the Commercial Bank, to be sold on the 10th September, 1864, under the *ven. ex.*, but not naming any other writ. These advertisements were regularly continued until the 10th of September: the sale was adjourned until the 26th of November, 1864.

On the 29th of August, 1864, the sheriff advertised the same lands, under the *alias fi. fa.* writs of the Commercial Bank, for sale on the 26th of November; and on the 16th day of September following, a rule to return the plaintiff's writ was served on the sheriff on behalf of the plaintiff.

*English* for the plaintiff shewed cause.—The advertisement in the *Star*, the local newspaper, while the plaintiff's writ was in force, and while also the Commercial Bank writs were in force, was a sufficient seizure of the lands, although no advertisement was published in the *Gazette* until after the Commercial Bank writs had expired. This advertisement in the *Star*, although it professed to be at the suit only of the Commercial Bank writs, operated as well to the benefit of all other writs which the sheriff had then in his hands to be executed: *Bank of Montreal v. Munro*, 28 U. C. Q. B. 419. The advertisement, therefore, was in law a seizure in fact made under the plaintiff's writ. The subsequent publication of the 25th July, 1863, being made while the plaintiff's writ was still in force, was consequently available to the plaintiff's writ, although it professed to be only a publication under the Commercial Bank writs, and although these writs had then run out: *Rowe v. Jarvis*, 13 U. C. C. P. 496. Any act, such as taking a list of lands by way of seizure, is a sufficient seizure: *Doe d. Tiffany v. Miller*, 6 U. C. Q. B.