

horse, &c., belonged to him, and exhibited a receipt for \$125. The horse had been advertised to be sold on 23rd May, by Potter, and he, Gibb, had told Gowdey, previously, that he had been instructed to sell horse, &c., for \$175. Gowdey told him he had given the landlord his word not to let the horse go till he was settled with. Moore, another witness, was in the employ of Shaw & Gowdey from December to June. He (Moore) says, he was to sell the horse, if he could do so, and see, meanwhile, that he was well taken care of. The horse was driven by James Elder, in the employ of Shaw & Gowdey. Moore says he had control of the horse, and not Shaw & Gowdey. He admits seeing Charles T. Gibb in May, about the horse. He told him of an offer of \$150, and asked if he should take it, and was told to do so. Then Moore saw the horse advertised. The same day he saw Charles Gibb, who asked him for the horse. "I told him of the *Minerve* seizure. He went away and brought back an order on me to surrender the horse as the debt was paid. Well, as soon as the seizure of the *Minerve* was taken off I sold the horse to Murphy."

In cross-examination, he says that Murphy did nearly all the cartage for Shaw & Gowdey. Moore saw Gibb more than once on the day he sold the horse to Murphy, but said nothing to him about selling the horse to Murphy. He said he had Murphy's offer three months. He admits that in March he received instructions not to receive moneys. The money received for the horse by Moore, is in the hands of the defendants' attorneys. He had a letter from plaintiff's manager in January, saying that if he could not get \$125 for the horse alone, the manager would bring it back to Oshawa. James Murphy, another witness, says he was the buyer of the horse. James Elder was then driving the horse for the defendants, or Moore, he says. He, Murphy, leased the horse then to Shaw & Gowdey, and Elder continued to drive him, and they paid Elder. He got \$3 per day for the horse. He did not pay Elder. Elder says he was driving the horse when the seizure took place; was driving him for Moore in Murphy's waggon, and drove him for a month afterwards carting defendants' goods, and was paid all the same by Moore.

Three or four simple facts appear very plainly from this narrative. Shaw & Gowdey had the possession of the horse, &c., and Moore, their

clerk, held it under them. The horse was used every day in their business till a month after the seizure. So the driver, Elder, says. He was in Elder's possession when seized, doing their work. Shaw & Gowdey and Moore knew that the horse was wanted by the owner when sold on the 25th May. It is grossly improbable that Moore, their clerk, would sell him suddenly without their knowledge. Things went on as regards the horse in the same way for a month after the seizure, according to Elder the driver, he driving the horse and being paid by Moore. The cross-examination of Moore and Murphy, the buyer, witnesses for defendants, when cross-examined by plaintiff, shows a most evasive spirit. On the day of the sale, one obstacle after another was put in the way of Gibb getting the horse until 3 p.m., when Murphy came forward and said he was proprietor, having just bought him. There is proof of the seizure of the horse but not of the waggon or harness. The order will go that the horse, harness and waggon be given up, or that the defendants pay \$175. Costs in either case against them.

Greenshields, Busted & Guerin for plaintiff.

Kerr & Carter for defendant.

JUDICIAL COMMITTEE OF PRIVY COUNCIL.

July 18, 1883.

Present: THE LORD CHANCELLOR, SIR BARNES PEACOCK, SIR MONTAGUE SMITH, SIR ROBERT P. COLLIER, and SIR ARTHUR HOBHOUSE.

ATTORNEY GENERAL OF ONTARIO V. MERCER.

Escheat—Rights of Provincial Government.

Lands in Canada escheated to the Crown for defect of heirs belong to the Province in which they are situate, and not to the Dominion of Canada.

The judgment of their lordships was delivered by

THE LORD CHANCELLOR.—The question to be determined in this case is whether lands in the Province of Ontario escheated to the Crown for defect of heirs belong (in the sense in which the verb is used in the British North America Act, 1867) to the Province of Ontario or to the Dominion of Canada.

By the Imperial Statute 31 George III., cap. 31, section 43, it was provided that all lands