

But I am of opinion that the proposed sale on the 14th May, 1901, ought not to have been allowed to proceed, and that, while as to all other matters the action was rightly dismissed, it ought to have been retained for the purpose of enjoining that sale.

The attempt to sell without having put the properties into a condition in which they might be properly inspected and examined by intending purchasers, and fixing the date of the sale at a time which rendered any inspection or examination before it was held a matter of extreme difficulty, if not an impossibility, was not a compliance with, but, on the contrary, a violation of, the spirit of the order of the 21st August, 1897, in pursuance of which the defendants were professing to make the sale. . . .

Under the circumstances, if the sale had taken place as intended, it could not have failed either to have proved wholly abortive for want of bidders or to have resulted in the properties falling into the hands of the Canada Copper Company, as the plaintiffs allege the defendants designed they should, at an inadequate price.

The proceedings in Court arrested the sale, and there is now an opportunity of bringing the properties into the market in such manner as to secure the most favourable terms of sale and protect the interests of all the shareholders.

It is not now necessary to retain the action, but I think that, inasmuch as the plaintiffs were right in their contention on this branch of the case, though they failed in the others, there ought to have been no costs of the action and there should be no costs of this appeal.

ARMOUR, C.J.O., and OSLER, J.A., concurred.

LASTER, J.A., died while the case was sub judice.