

CLUTE, J.:—Seizure having been made under certain executions against the Henderson Roller Bearings Limited, by the Sheriff of Toronto, one Atkinson made claim thereto, and, upon the application of the Sheriff, an interpleader order was made, bearing date the 10th May, 1910, directing that, upon payment into Court by the claimant of the total amount of the executions and of other claims as therein provided, or upon giving security as therein required, and upon payment of the Sheriff's costs and expenses, the Sheriff should withdraw from possession of the goods, and that, unless such payment should be made or security given, the Sheriff should proceed to sell the goods and chattels, or sufficient of them to cover the amount of the executions, and pay the proceeds thereof into Court, to abide further order.

It was also thereby further ordered that the parties proceed to the trial of an issue in which the claimant Atkinson should be plaintiff and the execution creditors be defendants, the question to be tried being whether, at the time of their seizure by the Sheriff, the said goods and chattels were the property of the claimant as against the execution creditors, or any of them; and further provision was made that any other execution creditors desiring to take part in the contest of the said issue should be at liberty to do so, upon placing their executions in the hands of the Sheriff within twenty days from the date of the order, and notifying the solicitors for the execution creditor Fowler of their desire to come in, and of their agreement to contribute pro rata to the expenses of the contest. The question of costs as between the execution creditors and the claimant, and all other questions, were reserved to be disposed of by the Judge who should try the issue, and any questions not disposed of by him were to be disposed of thereafter in Chambers.

The issue was tried by Latchford, J., and decided in favour of the execution creditors; and, the interpleader costs and other costs not having been disposed of, and it further appearing that the Sheriff, in lieu of selling the goods and chattels in question pursuant to the order of the 10th May, 1910, at the request of the claimant and of the Henderson Roller Bearings Limited, and with the consent of the execution creditors, had continued in close possession of the goods and chattels pending the trial of the issue—it was further ordered on the 4th October, 1910, that the costs of the interpleader proceedings, and of that application, including costs of the Sheriff, be paid by the claimant to the execution creditors and to the Sheriff, and that, in default of such payment, the costs be paid by the Sheriff out of the proceeds of the sale of the goods and chattels as therein provided; and,