

strengthen defendants case, it may be considered by defendants good policy to make some settlement. . . .

Mr. McPherson asked to have it made a term of granting the commission that plaintiffs should give additional security. . . . This should not be done at present. It will be time enough to consider that point when notice of trial has been served, and the case is ready for hearing.

The order will provide for the execution of the commission during vacation.

Costs of motion in the cause.

JUNE 22ND, 1903.

DIVISIONAL COURT.

VIPOND v. GRIFFIN.

Sale of Goods—Rescission of Contract—Evidence of—Conduct of Parties—Appeal, Right of—Summary Trial of Interpleader Issue.

Appeal by defendant (execution creditor) from judgment of Judge of County Court of Lanark in favour of plaintiff (claimant) upon the summary trial of an interpleader issue as to a car load of apples sold by plaintiff to one Mitchell, and seized by the sheriff under defendant's execution against Mitchell, but claimed by plaintiff, upon the ground that the contract for sale between him and Mitchell had been rescinded.

J. A. Allan, Perth, for defendant.

C. H. Cline, Cornwall, for plaintiff, objected that no appeal lay and opposed the appeal on the merits.

The judgment of the Court (BOYD, C., FERGUSON, J., MACMAHON, J.) was delivered by

BOYD, C.—Having regard to the evidence and the conduct of the parties, there does not appear to be proof of a rescission of the contract to purchase the apples. The apples came to the possession of the purchaser Mitchell, and were advertised for sale by him, and some of them were sold. He was drawn upon for the price by the vendor after the alleged rescission of contract, the vendor saying in letter of 12th December, "we have not yet received notes to cover apples," and again on 17th December, "he (Mitchell) has had a car of apples from us for which we have not received a dollar." Between the writing of these letters the vendor goes to Carleton Place, learns of Mitchell's flight, but makes no claim to the apples then in Mitchell's store house and in part sold.