Full Court. HUXTABLE *v.* COUN. [Feb. 1.

County Courts Act—Interpleader—Plaintiff acting for bailiff in seizing goods under execution—Onus of proof at trial of interpleader issue——Estoppel—Sale of Goods Act.

At the trial of an interpleader issue in a County Court as to the ownership of certain wood seized under the execution therein by the plaintiff acting under authority from the bailiff and claimed by the claimant, it was contended on his behalf that the seizure was irregular and invalid because it was made by the plaintiff himself and not by the bailiff, also that the seizure had been abandoned, as, after notices being stuck upon the wood piles, no one had been left in charge. On appeal to this Court from a verdict in favour of the claimant,

Held, RICHARDS, J., dissenting:—

1. Under ss. 82, 83 of the County Courts Act, R S.M. 1902, c. 38, the seizure by the plaintiff under the authority of the bailiff was not unlawful or invalid, although it is undesirable that such a practice should be followed. (Sec. 83 was amended at the session of 1904 so as to take away the right of the bailiff to employ other persons to execute warrants or writs for him.—Ed.)

2. The evidence did not shew that the seizure had been abandoned, as the plaintiff, after putting up the notices of seizure on the wood piles, had asked a person living near to look after the wood, and a week or two later the bailiff came himself and placed the same person in charge.

Per DUBUC, C. The property in the wood never passed to the claimant, for, although he had contracted to buy it from the judgment debtor and had paid him $100 on account, it had not been measured and was not to be measured until brought by railway to Carman, and therefore under rule 3 of s. 20 of the Sale of Goods Act, R. S. M. 1902, c. 152, the property had not passed when the seizure was made. The plaintiff was not estopped from enforcing his execution by the fact that he had issued and served upon the claimant a garnishing order attaching any money that might have been due by the claimant to the judgment debtor on a sale of the wood, as he was entitled to take out the garnishing order as a precautionary measure in case it might be proved that there had been a valid sale.

Per PERDUE, J. Under s. 290 of the Act, it was not open to the claimant, on the trial of the interpleader issue, to raise any objections as to the validity of the seizure or as to its abandonment, but he could only take advantage of any such matter by making an application to set aside the interpleader summons; and, on the hearing of the latter, the judges should confine the investigation to the question whether the goods seized were the property of the claimant as against the execution creditor; and the onus rests on the claimant, in the first instance, of proving his ownership. If the bailiff attempts to take goods (not exempt) which he had no lega