

COURT OF APPEAL.

NOVEMBER 19TH, 1912.

REINHARDT BREWERY LIMITED, ET AL. v. NIPIS-
SING COCA COLA BOTTLING WORKS.

4 O. W. N. 366.

*Interpleader—Credibility of Witnesses—Onus in Favour of Possessors
—Possession of Incorporated Company—Fraud—Holding Out.*

An interpleader action wherein plaintiffs, execution creditors of one Abraham David, had seized certain goods alleged to belong to the said David, while in possession of defendants.

RIDDELL, J., *held*, that plaintiffs had not satisfied the onus upon them of shewing that the goods in question were not the property of defendants, and dismissed the action with costs.

DIVISIONAL COURT varied the judgment of RIDDELL, J., above, by declaring that plaintiffs were entitled to a portion of the goods so seized.

COURT OF APPEAL (MEREDITH, J.A., dissenting), dismissed an appeal from judgment of Divisional Court, with costs.

Appeal by the defendants from the judgment of a Divisional Court, reversing in part the judgment at the trial, of Riddell, J., in an interpleader issue between the parties.

The plaintiffs were execution creditors of one, Abraham David, and under their execution had seized the goods in question, while in the possession of the defendants.

C. H. Porter and G. F. McFarland, for the defendants.

W. R. Smyth, K.C., for the plaintiffs.

In giving judgment, RIDDELL, J., said among other things, "remembering that the onus is upon the plaintiffs to prove that the property is not the property of the defendants, I do not think there is sufficient before me to entitle me to find that the onus has been met. . . . The cause is full of suspicion" . . . etc. The learned Judge declined to place reliance upon the evidence of the Davids, of which family three members were called. The other witnesses upon both sides were evidently regarded as equally credible, at least, nothing to the contrary is said.

No notes of the judgment delivered in the Divisional Court appear in the printed appeal book, but it is apparent from the formal judgment that the Court regarded the situation of the goods purchased from Zahalan as different from the other goods seized since, it is only as to the latter that the appeal was allowed. As to the latter the Court must have been satisfied that the plaintiff had satisfied any onus originally resting upon him.