

P. W. Dorion, qui est déchargé de sa responsabilité comme caution, etc.

Judgment reversed and action dismissed.

DRUMMOND, BADGLEY and MONDELET, JJ., concurred.

Dorion & Dorion, for the Appellant.

Doutre & Doutre, for the Respondent.

WOODMAN ET AL., (defendants in the Court below) Appellants; and GENIER (plaintiff in the Court below) Respondent.

Sheriff's Sale—Last and highest bid.

This was an appeal from a judgment rendered in the Superior Court at Beauharnois, by *Loranger, J.*, on the 28th of March, 1865. The facts of the case were these: On the 12th October, 1859, the plaintiff was the proprietor in possession of an immovable in the District of Beauharnois. Hainault, one of the defendants, in his quality of Sheriff, took this immovable in execution. The sale took place on the 12th October, 1859, when the property was adjudged to Bard P. Paige and Henry Woodman, for £573. The plaintiff charged the Sheriff with having made a fraudulent sale, as several parties were present willing to bid more, but were not allowed an opportunity to do so. He accordingly brought an action and inscribed *en faux* against the return of the Sheriff and bailiff, with prayer that the sale be declared null, and the plaintiff be reinstated in possession.

The defendants pleaded that the sale was regularly carried out. The most important evidence was given by one Cameron, who described the transaction thus: "I followed by a bid of £10, and after that it continued by bids of £5 or less, until it reached the sum of £570. This last amount being my bid, I asked the bailiff again if the property was mine, but he did not give me any answer. There was a stay again, and the bailiff sat down on the platform; then a gentleman whom I heard called Paige, said £3, and immediately I said £1. I gave my bidding £1, as quick as the £3 were out of Mr. Paige's mouth. The bailiff told me that I was too late and refused my bid."

The judgment of the Superior Court held that the bid of Cameron was in time, and should have been accepted, and that the sale

was in consequence null. From this judgment the present appeal was instituted.

BADGLEY, J. This is an appeal from the Superior Court at Beauharnois. Woodman, one of the appellants, obtained judgment against Genier, and caused his real property to be seized under a *fi. fa.* At the time of the sale, the bailiff employed received bids up to £570. Shortly afterward, Paige, one of the plaintiffs, bid £573, which was simultaneously or almost simultaneously overbidden by Cameron, who bid £574. The bailiff refused to receive the last bid, and knocked down the property. Cameron was quite competent to pay his bid, and was within the allowed time. The last and highest bidder must be adjudged the purchaser, but the highest bidder cannot be ascertained till the close of the sale, and therefore there must be some formal intimation of that close. Under these circumstances the judgment of the Superior Court must be confirmed.

DUVAL, C. J., DRUMMOND and MONDELET, JJ., concurred.

Leblanc & Cassidy, for the Appellants.

Doutre & Doutre, for the Respondent.

SUPERIOR COURT.

October 5, 1867.

SHANNON *et al.* v. WILSON, *et al.*

Practice—Serment Supplétoire.

MONK, J. In this case a woman was sued as a widow upon an obligation. In the deed she declared herself to be a widow. Now when she was sued she came into Court and said that her husband was not dead. Another feature in the case was an intervention by the husband. The parties had joined issue upon the merits. The Court was of opinion that the evidence to show that the husband was living was not conclusive. The Court would, therefore, order him to come into Court for the *serment supplétoire*. If he came into Court, and said he was not dead but living, the Court must dismiss the case.

[On the 17th October, the husband appeared before the Court in person, whereupon the plaintiff's action was dismissed as against the wife, and judgment went only against the intervening party.]

Kelly & Dorion, for the Plaintiffs.

C. P. Davidson, for the Defendants.

Perkins & Ramsay, for the Intervening party.