

parts, there should be ratable apportionment according to the respective values of the real and personal estate.

*J. V. Teetsel*, K.C., and *J. W. Elliott*, for various parties. *Harcourt*, for infants.

Meredith, C.J., MacMahon, J., Lount, J.]

[Nov. 12.

STAUNTON v. McLEAN.

*Fi. fa. lands—Sheriff's sale—Irregularities—Division Court judgment—Transcript—Advertisement—Return—Inadequacy of price—New trial—Affidavits.*

Appeal by the defendants from the judgment of FALCONBRIDGE, C.J., in favour of the plaintiff in an action by a purchaser at a sheriff's sale to recover possession of the land purchased.

*Held*, 1. It is not an objection to the sheriff's sale that no execution was issued from the Division Court in which the judgment was recovered before the issue of the transcript to the County Court in 1893. According to *Jones v. Paxton*, 19 A.R. 163, *Burgess v. Tully*, 24 C.P. 549, is no longer applicable.

2. Although the execution was issued against two defendants, while the transcript shewed a judgment against only one, and although the execution recited the wrong date for the judgment, these were mere irregularities which did not vitiate the sale.

3. It was not necessary to the validity of the sheriff's deed that there should be an advertisement in the Gazette. The absence of an advertisement was a mere irregularity.

4. The fact that there was no return to the *fi. fa.* goods did not invalidate the sale, but was a mere irregularity. *Ross v. Malone*, 7 O.R. 397, followed.

5. The inadequacy of the price for which the lands were sold to the plaintiff might have been a ground for declaring that the deed should stand merely as security for the amount paid, but in this case there were other circumstances, and the trial judge had made a finding of fact, viz., that the defendants authorized the sale, which made it impossible to so declare, there being evidence to support such finding.

6. The affidavits filed for the purpose of obtaining a new trial did not make out a case which would justify the Court in exercising its discretion to grant a new trial.

Appeal dismissed with costs.

*Mabe*, K.C., for defendants. *T. H. Lennox* and *S. B. Woods*, for plaintiff.