

being implements of trade; and the plaintiff brought an action against the sheriff in a County Court to recover \$100. While the action was pending and the sheriff still had the proceeds of sale in his hands, he applied to the judge of the County Court for an interpleader order, which was made, directing an issue between the plaintiff and the execution creditors.

Held, on a motion by the execution creditors for prohibition, that notwithstanding that the defendant was a sheriff and that the money in his hands was made by him as sheriff under execution, he was entitled to the benefit of Rule 1141 (a) if the facts before the judge satisfied him that the case was within that Rule; and the judge having jurisdiction and the interpleader order being a proceeding in the suit, the court could not interfere.

Aylesworth, Q.C., for the sheriff.

H. Cassels for the execution creditors.

C. J. Holman for the plaintiff.

ORMSBY J. JARVIS.

CHAPMAN J. JARVIS.

Bill of sale—Affidavit of bona fides—Statement of consideration—R.S.O., c. 125, s. 5—54 Vict., c. 20, not retrospective—Execution creditor contesting bill of sale—Previous assent—Estoppel.

The affidavit of *bona fides* accompanying a bill of sale stated that the sale was *bona fide* and for good consideration, namely, in consideration of \$830 which was the consideration expressed in the bill of sale: advanced by the bargainee by way of a loan. The evidence given upon the trial of an interpleader issue between the bargainee and an execution creditor of the bargainors showed that the real transaction was a sale and not a mortgage, and that the transfer of the goods covered by the bill of sale was made in satisfaction of a previous advance and not as security for a present one. It was contended that the affidavit of *bona fides* was defective in not stating, as required by R.S.O., c. 125, s. 5, "that the sale is *bona fide* and for good consideration, as set forth in the said conveyance."

Held, STREET, J., dissenting, that the affidavit substantially complied with the statute, and the addition of the words "advanced by way of a loan" did not render the affidavit defective.

Per STREET, J.: The most obvious meaning of the words used in the affidavit is that in consideration of a loan of \$830 made by the bargainee to the bargainors, they were transferring to her the goods in question; and the plain inference is that the instrument is intended to operate as a mortgage and not as a sale. The instrument is not verified by the affidavit, but is, instead, rather qualified and rendered ambiguous by it, and the object of the Act in requiring the affidavit is not attained.

The bill of sale was given on the 17th March, 1891, and the Act, 54 Vict., c. 20, was passed on the 4th May, 1891, s. 3 of which provided that nothing in this Act shall affect any action, etc., now pending, and every such action, etc., shall be adjudicated upon, and the said Act (R.S.O., c. 124) be construed as if this Act had not been passed.

Held, per ARMOUR, C.J., and FALCONBRIDGE, J., that the Act was not retrospective and did not apply to the bill of sale in question, and that no inference was to be drawn from s. 3 that the Legislature intended that the Act should be retrospective.

It was contended that the execution creditor was prevented from contesting the validity of the bill of sale because A., who held the promissory note upon which the judgment was founded at the time the bill of sale was given, assented to its being given, his note then being overdue.

Held, per STREET, J., that admitting A. to have some days before the bill of sale was made assented to the judgment debtors transferring the goods, he did not thereby preclude himself from afterwards recovering judgment and seizing the goods before any transfer had, in fact, been made; and there was no transfer here because the attempted transfer was void.

Watson, Q.C., for the plaintiffs.

J. M. Clark for the defendant.

HOLLINGER v. CANADIAN PACIFIC RY. CO.

Railways and railway companies—Negligence—Accident at crossing—51 Vict., c. 29, s. 256—Ringing bell or sounding whistle—Other precautions—Unusual danger—51 Vict., c. 29, s. 260—Engine and tender, a "train of cars"—"Stop, look, or 'listen."

In an action against a railway company for negligence whereby the plaintiff was run over