

3. In fixing the value of a tract of wild land a process of averaging is reasonable and a compliance with the statute.

Per DRAKE and IRVING, JJ., DUFF, J., dissenting: That by the operation of s. 3 of the Amending Act, with respect to all the lands granted to the company, the exemption from taxation conferred by s. 7 of the Subsidy Act expired with the expiration of the period of ten years, beginning with the 8th April, 1893, and that therefore the lands claimed to be exempt were assessable.

Per DUFF, J.: The Court of Revision under the Assessment Act, 1903, had no jurisdiction to decide whether or not the lands in question were exempt from taxation, and consequently the Full Court has no jurisdiction to deal with that question.

*MacNeill*, K.C., for the company. *John Elliott*, contra.

Richards, J.] MASSEY-HARRIS CO. v. MOLLOND. [August 15.

*Sheriff—Negligence of bailiff—Liability for loss of stolen money—Satisfaction of judgment when sufficient goods seized—Sale under fi. fa. immediately after seizure.*

Application by the executors of the estate of the defendant on notice to the sheriff and the plaintiffs for an order for the entry of satisfaction of the plaintiffs' judgment against the defendant under the following circumstances:—The sheriff having received a fi. fa. goods on the judgment, and also one for another creditor, sent warrants to his bailiff, Adams, to realize thereon. The defendant died, and his executors decided to sell his chattels by auction, and employed Adams, who was an auctioneer, to conduct the sale. Adams advertised the sale as being by order of the executors, to be held on April 5, 1901. On his arrival at the place of sale he seized the goods under the fi. fas. and notified the executors and their solicitor. The sale was then proceeded with, none of the buyers knowing anything about the fi. fas. Some of the chattels were paid for in cash and others by promissory notes made payable to the executors, the money and notes being handed over to Adams at the close of the sale.

The Union Bank of Canada had a mortgage on some of the chattels, and, at the request of the bank's solicitor, Adams agreed to hold the money and notes until the bank should be paid off by the executors out of other funds. Adams afterwards collected the amounts of the notes, and, instead of putting the money into a bank, he kept it along with the other money in an ordinary cash box in his office, from which it was subsequently stolen. After this, the executors paid off the bank's claim, and then paid the sheriff a sum which, with the money stolen from Adams, was sufficient to discharge both executions. Adams paid nothing to the sheriff on the executions, and the sheriff paid nothing to the plaintiffs, and claimed that he was not bound to account to them for anything beyond the sum received directly from the executors.