

authorities are numerous and uniform that it should be public, so as to ensure the best price being obtained: Schouler on Bailments, 3rd ed., secs. 227, 228, 229; Lawson on Bailments (1895), sec. 62; and see Am. & Eng. Encyc. of Law, 2nd ed., pp. 882-891.

I think this sale was not made with reasonable care or with proper or any regard to the rights and interests of Ritchie. No attempt had been made to reach the inquirers referred to in Mr. Burn's letter of 18th March, and who were expected at that time to become purchasers, and when the offer of 19th August came, its terms were not communicated to Ritchie, but he was called upon to redeem within 48 hours, or in default it would be accepted. That offer was about  $10\frac{1}{2}$  cents in the dollar of the bonds and arrears of interest which were sold. The very first offer was accepted, because it was sufficient to pay the bank's debt, although they knew there were other inquirers for the bonds, who, as they had reason to believe and expect, might become purchasers. They also carelessly sold more than were necessary to pay their debt, without any effort to restrict the sale to what was sufficient for the purpose, and, although the offer was at so much in the dollar, and not a fixed sum for the whole, I think such a sale, even if the bank had power to sell by private contract, which I think they had not, cannot be supported as between the bank and Ritchie, and by reason of notice to respondents cannot be maintained by them any more than it could be by the bank.

I therefore think the appeal should be allowed, and that the decision of the Master should be restored.

GARROW and MACLAREN, JJ.A., concurred.

OSLER, J.A., dissented, for reasons given in writing.

APRIL 12TH, 1905.

C.A.

ONTARIO LADIES COLLEGE v. KENDRY.

*Company—Subscription for Shares—Conditional Subscription—Condition not Fulfilled—Representation of Agent of Company—Materiality—Untruth—Invalidity of Subscription.*

Appeal by plaintiffs from judgment of BOYD, C., dismissing without costs an action brought by an incorporated body