

Action for conversion of a stallion, tried at Bracebridge on 8th May, 1913.

J. I. Mulcahy, for plaintiff.

W. H. Kennedy, for defendant.

HON. MR. JUSTICE MIDDLETON:—The plaintiff had purchased a stallion from one Armstrong, but apparently had paid very little on account of the purchase. This, however, is not material; as, upon the evidence, the title had passed to him. The horse was boarded by the plaintiff at the defendant's stable, and it is admitted that the defendant was entitled to a lien for its keep. The question as to whether the lien was affected by the horse being from time to time taken away from the stable was not raised nor discussed.

Under the statute 1 Geo. V., ch. 49, sec. 3, sub-sec. 6, the defendant would have the right, after the board was unpaid for two weeks, to sell the horse "on giving two weeks' notice by advertisement in a newspaper published in the municipality."

An advertisement was published in the issue of the *Gravenhurst Banner*, on December 5th and December 12th, of a sale to be held on December 14th. This was not two weeks' notice; and, as the notice is a statutory condition of the right to sell, there was no right to sell at that time.

At the sale the defendant himself bought the horse in, and thereafter claimed to own him.

The right given by the statute is a right to sell. Manifestly this must be a sale to some third person, and the vendor cannot himself be the purchaser.

At the trial I gave leave to amend by alleging conversion, and left only to the jury the question of the value and of the amount due for board.

There will, therefore, be judgment for the net sum of three hundred dollars and costs.

There was no evidence whatever given in respect of the allegation in statement of claim as to discouraging bidding at the sale; nor was any evidence tendered on the part of the defendant to support the allegation contained in the fourth paragraph of the defence.

I do not think it is a case in which I should interfere as to costs.