

Was he an "officer of the Crown?" (Reference to secs. 360, 363, and 368 of the Municipal Act, R.S.O. 1914 ch. 192; and secs. 126, 128, and 129 of the Liquor License Act.)

Section 129 cannot be so construed as to make of a policeman or constable an officer of the Crown with the powers conferred by sec. 106; nor is there any other warrant for so holding.

The conviction should be quashed, but without costs, and with protection to the magistrate.

BOYD, C.

FEBRUARY 21ST, 1916.

***MIDLAND LOAN AND SAVINGS CO. v. GENITTI.**

Mortgage—Funds Derived from Fire Insurance and from Sale of Mortgaged Premises—Application of Insurance Moneys—Mortgages Act, R.S.O. 1914 ch. 112, sec. 6 (2)—Marshalling—Execution Creditors—Second Mortgagee—Priorities—Master's Report—Appeal—Costs.

Appeal by the defendants the Cornwall Beef Company and Donald Ciotti, execution creditors, as subsequent incumbrancers made parties in the Master's office, from the report of the Local Master at Sault Ste. Marie in a mortgage action.

The appeal was heard in the Weekly Court at Toronto.

A. W. Langmuir, for the appellants.

G. S. Hodgson, for the plaintiffs.

No one appeared for the defendant Wileox, who was served with notice.

THE CHANCELLOR said that the doctrine of marshalling had been misapplied by the Master in dealing with the administration of money in this case.

"Where a creditor, who has two funds, chooses to resort to the only fund upon which other creditors can go, they shall stand in his place for so much against the fund, to which they otherwise could not have access." That is the definition of marshalling in the argument of Mr. Romilly (afterwards Master of the Rolls) in *Aldrich v. Cooper* (1803), 8 Ves. 382, 383.

In this case the Master treated the moneys derived from mortgaged premises as two funds because part came from moneys derived from an insurance upon buildings on the mortgaged premises destroyed by fire, and part from the sale of the mortgaged premises after the fire. The Master dealt with the proceeds of the insurance by process of marshalling between prior and subsequent mortgagees, and thus impaired the rights of execution creditors intermediate between the mortgagees.