

*in the circumstances stated below, the evidence was insufficient under C.C.P. 714 to set aside the sale.*

TORRANCE, J. This is a petition to set aside a sale made by the Sheriff on the 11th December of defendant's land, on which the petitioner had a mortgage of \$4,000. This property was purchased by Alfred G. Isaacson for \$2,200 as the last and highest bidder. The allegation was that the purchase by Alfred G. Isaacson was fraudulent; that he was son of the defendant, and her *prête-nom*; that he had no intention of purchasing, and defendant used artifices to prevent persons from attending and bidding, namely, Elijah E. Shelton, who was prepared to bid up to \$4,500; that petitioner would have been paid if the property had been sold at its value.

It was proved at the trial that the property was worth over \$4,000, and sold for \$2,200, and was bought by Alfred G. Isaacson for \$2,200, and that the mortgage claim of petitioner was \$4,000. But it is not proved, as required by C.C.P. 714, that fraud and artifice were employed with the knowledge of the purchaser to keep people from bidding. It is true that the male defendant, Mr. Isaacson, N.P., had asked Mr. Shelton to bid up the property to \$4,000 or \$5,000, to prevent it being sacrificed to his loss, and a day or two afterwards Mr. Isaacson told Mr. Shelton that he thought the building society would buy it in, and that he would be able to rent it from them, and that if Mr. Shelton did not want it, he did not consider that it would be any benefit to him to buy it in as he had asked. But I find no artifice proved. The truth is that the sale was fixed for 10 a.m., and the society was unrepresented in consequence of their agent having made a mistake in the hour, and only attending at 11 a.m. There being few bids, Alfred G. Isaacson became the purchaser. His acquisition cannot be disturbed.

Petition dismissed.

W. H. Kerr, Q.C., for petitioner.

W. W. Robertson, for purchaser.

[In Chambers.]

MONTREAL, May 1, 1880.

COMMERCIAL MUTUAL BUILDING SOCIETY v. McIVER  
et vir, and PLFF., petr.

Costs—Petition to vacate Sheriff's Sale.

*Costs upon a Petition to set aside a Sheriff's Sale on ground of fraud are the same as those allowed in ordinary suits.*

The plaintiff presented a petition to set aside a sheriff's deed on ground of fraud on the part of the purchaser, and the petition was dismissed with costs. (See preceding case.)

A petition to revise the taxation of the bill was now made by petitioner, he alleging "that respondents have included in their bill of costs, taxed herein, an item of \$50 as attorneys' fee on said petition; that respondents are not by law entitled to such fee; that the only costs respondents can exact are the sum of \$3, as provided by Art. 26 of tariff of advocates, and the sum of \$8, as provided by Art. 42 of said tariff; and that by the tariff no attorney's fee is allowed on such proceedings."

RAINVILLE, J., dismissed the petition.

Kerr, Carter & McGibbon, for petitioner.

Robertson & Fleet, for respondent.

#### LIABILITY OF ACCIDENT INSURANCE COMPANIES.

There is much truth in the observation that it is extremely difficult, if not impossible, to formulate a rule or principle which shall apply to a number of cases, each of which depends upon the construction of different instruments. Nevertheless, that observation is deprived of its force where those cases or instruments have certain circumstances in common, and those circumstances are alone sufficient upon which to found the *ratio decidendi*. Hence arises the utility of examining cases such as *Winspear v. The Accident Insurance Company* (42 L. T. Rep. N. S. 900) which is the last reported case dealing with the rights of a person insured against injury caused by accidental external means. In that case the policy provided that no claim should be made "for any injury from any accident unless such injury should be caused by some outward and visible means," or for "any injury caused by or arising from natural disease or weakness, or exhaustion consequent upon disease, or any medical or surgical treatment, or operation rendered necessary by disease, or any death arising from disease, although such death may have been accelerated by accident." The assured, in crossing a stream or brook, was seized with an epileptic fit, and fell down, and, whilst suffering such fit, was drowned. The