

OLIVIER vs. KEATING.

Attachment—Sale in Execution—Liability of Messenger of Resident Magistrate's Court.

K., the Messenger of a Resident Magistrate's Court, attached and sold under a writ of execution issued against S. certain oxen in the possession of S., but the property of O. K. was informed by S. at the time of attachment that the oxen belonged to O., but O., who was out of the Colony at the time, gave K. no notice of his claim.

Held, that under these circumstances K. was liable to O. in an action for damages and the value of the oxen.

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This was an argument on a point reserved by DWYER, J., at the Circuit Court held at Oudtshoorn, March 24th, 1880. One F. Schneegaans had hired from the plaintiff ten oxen. Subsequently a judgment was given against the said F. Schneegaans in the Resident Magistrate's Court at Oudtshoorn, and a writ of execution was issued on this judgment. Defendant, who was Messenger of the said Court, attached under the said writ, and sold, six of the oxen belonging to the plaintiff. Defendant was informed by Schneegaans at the time of seizure that the oxen belonged to plaintiff, but plaintiff himself, who was in the Orange Free State at the time, did not give defendant notice of his claim. Plaintiff brought action against defendant in the Circuit Court held at Oudtshoorn, for the alleged value of the oxen, and for damages. Judgment was given for plaintiff for £50 with costs, but the Court ordered execution to be stayed for a time, in order that the opinion of the Supreme Court might be had upon the point whether the defendant having sold property of the plaintiff without having received from the plaintiff any notice of his claim, was liable to the plaintiff for the value of the property so sold.

Leonard (with him *Upington, A.G.*). Defendant was bound at his peril to execute the writ only on the goods of Schneegaans (*Roscoe's Nisi Prius*, p. 1178, 14th edition; *Dawson vs. Wood*, 3 Taunton, p. 256).

Jones (with him *Giddy*), for defendant. Under the circumstances defendant is not liable (*58th Rule of Resident Magistrates' Courts*; *Churchill's "Sheriff Law,"* p. 253, 2nd edition; *Dean vs. Whittaker and Another*, 1 Carrington and Payne, p. 347; *Ward vs. Macauley and Another*, 4 Durnford and East, p. 489; *Ord. 37 of 1828*, § 8; *Tancred vs. Allgood*, 4 Hurlstone and Norman, p. 438).

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DE VILLIERS, C.J.:—The Sheriff is empowered only to take into his charge so much of the movable property of the debtor as will be sufficient to satisfy the claim. The question is whether the plaintiff is to have any remedy whatever. The debtor informed the Messenger—who is in the same position as a Sheriff—that certain oxen belonged to the plaintiff, and if the Messenger thereafter seized and sold those oxen he did so at his own peril. It is clear that the defendant is liable to pay the damages. Judgment has been given in the Court below for £50, and for that amount judgment must stand.

DWYER, J., concurred.

SMITH, J.:—I am of the same opinion. I am afraid that the result may be to open the door to fraud, but it is for the legislature to interfere.

[Attorneys for Plaintiff, TREGOLD & HULL.]
[Attorney for Defendant, C. H. VAN ZYL.]

BLAND vs. THE TRUSTEES IN THE INSOLVENT ESTATE
OF H. J. EKSTEEN.

Remuneration of Trustees in Insolvent Estates.

A trustee in an insolvent estate must, in the absence of a resolution of the creditors to the contrary, be contented with the commission allowed to him by law, and cannot make any other profit out of his position as trustee.

Where a trustee in an insolvent estate, who lived at H., charged in his liquidation account the sum of £3, which he had