Plaintiff contended that as he was an attorney, by privilege he could bring the action in any Court he wished.

Held, that the County Court being a Statutory Court and the plaintiff being an attorney of the Supreme Court, he had no privilege in the county, none being given in the County Court Act.

Non-suit ordered.

MacRae, for defendant.

Campbell, for plaintiff.

Province of Manitoba.

QUEEN'S BENCH.

KILLAM, J.] [April 10.

LINSTEAD *v.* HAMILTON PROVIDENT AND LOAN SOCIETY.

Mortgage—Landlord and tenant—Attornment clause in mortgage—Distress for interest—The Distress Act R.S.M. c. 46, sec. 2.

The plaintiff purchased a horse at a sale by the defendants of chattels distrained for arrears of rent on the premises of one of their borrowers, who had given them a mortgage containing a special attornment clause, which in the opinion of the learned judge effectually created the relation of landlord and tenant between the defendants and the mortgagor.

A third party claiming that the horse belonged to him replevied the animal from the plaintiff, and succeeded in the County Court. The plaintiff then brought this action for damages for breach of warranty of title, and had a verdict in the County Court.

On appeal to a Judge of the Queen's Bench,

Held, that the distress made by defendants was valid, and that they could seize and sell the property of any person on the mortgaged premises; that plaintiff had acquired a good title to the horse, and had no right of action against defendants. *Trust and Loan Co.* v. *Lawrason*, 10 S.C.R. 679, distinguished, because in that case there was no fixed rent reserved. This case also differed from *Hobbs* v. *Ontario Loan Co.*, 18 S.C.R. 483, because in the latter case the disproportion of the rent purported to be reserved, with the fair annual value of the land, in the opinion of the majority of the Court showed the attempted creation of a tenancy to be a sham, and not really intended by the parties.

Held also, following the latter case, that a tenancy was validly created, although the instrument was not executed by the mortgagee.

It was contended on behalf of the plaintiff that sec. 2 of The Distress Act, R.S.M. c. 46, which provides that the right of mortgagees to distrain for interest due upon mortgages shall be limited to the goods and chattels of the mortgagor only, and as to such goods and chattels to such only as are exempt from seizure under execution, was applicable, and prevented the mortgagees from distraining the goods of a third person, but the learned Judge held, that this section must be strictly construed, and has no reference to the right of