

Under executions placed in his hands in these cases, the sheriff had seized a quantity of rolling stock and other property in the possession of the defendants, and upon receipt of certain claims thereto obtained on 2nd May, 1893, an interpleader order. Afterwards in July, 1893, Delap made a claim to be the owner of two engines and tenders, part of the property seized by the sheriff; and then in August the sheriff received notice that Delap and the Canadian Locomotive and Engine Company, "or one or other of them," claimed the same engines and tenders. The sheriff took no action on either of these claims.

On 21st February, 1894, the sheriff was served with a new notice by Delap, claiming that he was then the sole owner of the engines and tenders, and also a notice "that the Locomotive and Engine Company abandoned" any claim it might have in favour of Delap, and a demand for delivery of the chattels up to Delap was then made upon the sheriff. On the next day Delap issued a writ of summons against the sheriff, claiming the return of the engines and tenders and damages for their detention.

The sheriff appeared and defended this suit, and it proceeded to issue. On April 3rd following, the sheriff applied to amend the interpleader order by adding Delap as a claimant, but the referee dismissed the application on the ground of the sheriff's delay, and because he had defended the action brought by Delap to enforce his claim instead of coming promptly to the court for relief.

*Held*, on appeal from the referee, that a sheriff does not necessarily preclude himself from obtaining relief under the Interpleader Act, R.S.M., c. 77, s. 8, by appearing and pleading to the claimant's action, and that relief should not be refused to him, unless it appeared that other parties were prejudiced by the delay that had taken place, and, as this did not appear, the interpleader order was amended by adding Delap as a claimant upon the sheriff paying the costs of the action at law, and of the application in chambers, without costs of the appeal.

The following cases in equity where bills of interpleader were filed, viz., *Cornish v. Tanner*, 1 Y. & J. 333; *Hamilton v. Marks*, 5 D. & Sm. 638; *Jacobson v. Blackhurst*, 2 J. & H. 486, show that the analogy from equity is in favour of granting the relief asked for here, notwithstanding the objections urged.

*Holt v. Frost*, 3 H. & N. 821, followed.

*Harris v. York*, 8 M.R. 89, distinguished.

Order accordingly.

O. H. Clark for the sheriff.

Bradshaw for Delap.

Nugent for the plaintiff.

BAIN, J.]

[May 22.]

MAGEE v. SMITH.

*Overholding Tenants' Act—Notice to quit—Acquiescence by tenant—"Vacate by 30th April," meaning of.*

This was an application, under the Overholding Tenants' Act, for an order for possession of the premises, No. 489 Main Street, Winnipeg. The