

MANITOBA.

COURT OF QUEEN'S BENCH.

Full Court.]

[May 15.

GOGGIN v. KIDD.

Husband and wife—Ownership of crops grown on wife's land—Separate business.

At the trial of an interpleader issue between the plaintiff, the wife of the execution debtor, and the defendants, execution creditors of the husband, the judge found on the facts as follows :

That the lands on which the crops seized had been grown were mortgaged to the Trust and Loan Company ; that the mortgagor, the debtor, had failed in 1893, most of his crops of that year and his stock and farming implements having been seized and sold under execution and chattel mortgage ; that, interest being in arrear, the officers of the loan company in the spring of 1894 leased the property to the plaintiff for three years, whether by the authority of the company or not did not appear ; but that the plaintiff entered into the lease in good faith, and that both the husband and wife intended and understood that there should be and was a lease to the wife, and that she should and did carry on the work of farming on the said lands for her separate profit and as her separate business ; also, that the horses and cattle by the work of which the farming operations were carried on had been sold to the plaintiff by the mortgagee under chattel mortgage given by the husband, and that such sale was not fraudulent as against the creditors ; that the plaintiff entered into a covenant to pay the rent under the lease, and incurred a heavy liability to an implement company for seed grain and implements and binding twine, and also hired the men who were employed to conduct the farming operations, and that she assumed to make a contract with her husband to act as her servant for wages ; that she was actually the farmer, and that it was intended and understood between herself and her husband and the loan company that she should have the possession and use of the premises ; that the farming operations carried on in 1894 under such circumstances constituted a separate occupation by her, and were her separate business ; and that, on the whole, the amounts which she covenanted to pay for the three years of the lease represented the fair rental value of the property for that period, and he entered a verdict for the plaintiff.

On motion to the Full Court to reverse this verdict, and to enter a verdict for the defendants,

Held (DUBUC, J., dissenting), that the evidence was insufficient to establish any separate occupation of the lands by the wife, or that the farming business was her separate business. The court should require clear and unequivocal evidence of the reality of such separate occupation on the part of the wife. The plaintiff, when she undertook to farm for herself, had no means of her own. The lands upon which the crops claimed were grown had in the fall preceding been plowed and prepared for seed by the husband, and some of the seed