The County Judge had decided that the plaintiff's writ was not in the hands of the sheriff to be executed at the time when the bailiff seized the goods under the defendant's execution on 25th April, 1896.

The plaintiff's execution was received by the sheriff on 17th March, 1894, without any special instructions, none had afterwards been sent to the sheriff in any way, and the writ had been renewed according to the practice; but the evidence showed that there was an agreement or understanding between the plaintiff and Pope, who kept a store at Melita, that the execution was not to be proceeded with until some other execution should be issued against him, and Pope continued to carry on the business and bought other goods from the three firms for whom the plaintiff's judgment had been obtained, and made payments on account, the plaintiff and the creditors whom he represented well knowing the defendant's circumstances. Neither the plaintiff nor his attorney had made any inquiry as to what the sheriff was doing, or required him in any way to proceed.

Held, following *Pringle* v. *Isaac*, 11 Price 445, and *Kempland* v. *MacAulay*, 1 Peake 95, that the decision of the County Court Judge on the evidence was correct, the plaintiff's writ being no longer in the sheriff's hands to be executed, and that the absence of the words "to be executed" from s. 20 of the Executions Act makes no difference in its construction.

Freeman on Executions, s. 206, quoted and approved.

Appeal dismissed with costs.

Howell, Q.C., and *Mathers*, for plaintiff.
Wilson and *Huggard*, for defendant.

BAIN, J.] [June 15.

DOBSON *v.* LEASK.

Security for costs—Property within jurisdiction—Affidavit—Queen's Bench Act, 1895, Rule 500.

The plaintiff being a non-resident, the defendant issued a præcipe order requiring him to furnish security for costs. The plaintiff then moved to rescind the order on affidavit, stating that real estate in Manitoba was vested in him as administrator of one Alexander Leask, and that according to the best of his knowledge, information, and belief, this land was of the value of $3,000, and that it was unencumbered, as he was informed and verily believed.

Held, on appeal from the Referee, that such affidavit was insufficient as evidence of the ownership of real estate within the Province, sufficient in value to meet any possible demand for costs, the statement as to value and incumbrances being only on information and belief, and also that such affidavit, under Rule 500 of the Queen's Bench Act, 1895, should not have been received, as it did not show the deponent's grounds of belief.

Appeal allowed with costs, and order for security restored.

Hough, Q.C., for plaintiff.
Culver, Q.C., for defendant.