

On application of the prisoner for his release,

*Held*, that the warrant was bad in not showing that the agent had jurisdiction at the place where the offence was committed. By s. 8 of c. 32 of 57-8 Vict. (D.), substituted for s. 117 of the Indian Act, the agent would have jurisdiction all over Manitoba, but there is no ground for intendment that the offence was committed in Manitoba, when no place is specified. The learned judge, however, refused to order the discharge of the prisoner, but ordered the issue of a writ of *habeas corpus*.

*McMeans* for the prisoner.

*Aikins*, Q.C., for the Indian Department.

TAYLOR, C.J.]

SMITH *v.* THE UNION BANK.

[Dec. 4, 1894.]

*Interpleader—Ownership of crops grown on lands purchased from claimant on credit with stipulation that crops, when grown, should be the property of claimant—Execution intervening.*

This was an interpleader issue to determine whether a quantity of grain seized under execution in a suit by the bank against one Chapman was the property of the plaintiff as against the bank. The grain was grown upon land purchased in 1890 by Chapman from Smith upon credit. The agreement contained the following clause :

" Provided that all grain and produce grown upon said premises shall be and remain the property of the party of the first part, and shall not be removed therefrom until the then current year's payment of principal money and interest shall have been made without the authority of the party of the first part."

Chapman was in default in payment of the instalments or purchase money, but he continued in possession of the land and raised the crops, which had been seized, himself supplying all the seed and work. A writ of execution was placed in the hands of the sheriff in May, 1893, and the seizure was made in September, 1894.

*Held*, following *Clifford v. Logan*, 9 M.R. 424, that when the crop in question came into existence the ownership of it was in Chapman, and the agreement at most gave Smith an equitable right to enter and take the crop when it came into existence, or to call for the execution of a formal and legal mortgage upon it ; but when the crop came into existence in 1894, there being then in the hands of the sheriff an execution against Chapman at the suit of the bank, the crop was bound by it the instant it came into existence, and that the legal right of the bank under the execution took effect before the equitable right of Smith could be turned into a legal one. The equity maxim, *quis prior est tempore potior est jure*, applies only as between persons holding equitable interests which are in all other respects equal, when priority of time gives the better equity.

Verdict for the defendants.

*A. D. Cameron* for the plaintiff.

*Ewart*, Q.C., for the defendants.