Full Court.] JOHNSTON *v.* MILLER. [Jan. 11.

Levy under execution on judgment entered prematurely—Excessive damages.

The plaintiff was sued by the defendant, and judgment for default of appearance obtained on the 30th June, 1896. Plaintiff paid $100 on account of the judgment, and agreed to pay the balance in instalments. Subsequently it was discovered that the judgment had been entered prematurely, and proceedings were taken which resulted in its being set aside on that ground. Defendant thereupon brought a second action and obtained judgment for the balance due him, giving credit for the $100 paid on account of the previous judgment.

In the present action plaintiff claimed damages for the levy under the judgment irregularly entered, and the return of the amount paid, and the jury awarded him $1.100 damages. There being no evidence of specific damage, and it appearing that the levy complained of was of a merely formal character, none of the goods having been removed, and no one placed in charge,

Held, that the verdict must be set aside unless the plaintiff consented to reduce the verdict to $50, which amount the court considered sufficient.

J. A. Chisholm, for appellant. *A. Drysdale*, Q.C., for respondent.

Province of Manitoba.

QUEEN'S BENCH.

Full Court.] FOSTER *v.* LANDSDOWNE. [Nov. 30, 1897.

Practice—Demurrer—Queen's Bench Act, 1895—Rules 280, 426, 440.

The defendants in their statement of defence had, under Rule 280 (3) of the Queen's Bench Act, 1895, incorporated a demurrer to the statement of claim, besides raising questions of fact to be tried. They then, under Rule 426, set down the demurrer for hearing on a Wednesday, and after argument the demurrer was overruled. This decision coming before the full court for rehearing, counsel for plaintiff took the objection that under Rule 440 the demurrer should not have been set down for a separate hearing without an order of a Judge, but should be disposed of at the trial along with the issues of fact.

Held, that the objection would have been good if taken at the proper time; but, as the demurrer had been heard and overruled, the defendant could not now raise it at the trial, and that the rehearing must proceed.

Metcalf and *E. E. Sharpe* for plaintiff. *Attorney-General* and *James* for defendants.

Dubuc, J.] CURRIE *v.* RAPID CITY ELEVATOR CO. [Jan. 20.

Vendor and purchaser—Sale under order of court—Possession, effect of taking—Ex parte order.

This was an application, under Rules 685 and 691 of the Queen's Bench Act, 1895, for an order to issue execution against David Milne, who had, in September, 1896, made a written offer for the purchase of the property in