

Province of Manitoba.

QUEEN'S BENCH.

Full Court.]

[Feb. 27.]

LAMBERT v. CLEMENT.

Landlord and tenant—Sheriff—Execution creditor—Rent—8 Anne, c. 14, s. 1.

The plaintiff had an execution in the hands of the defendant, as sheriff, against the goods of one Murray, under which defendant seized a quantity of grain on Murray's farm, and realized the sum of \$138.88 after payment of expenses. Before the sale, however, the sheriff received notice from the Imperial Loan & Investment Co., claiming under 8 Anne, c. 14, s. 1, \$700 for a year's rent of the premises on which the grain had been seized. The sheriff having refused to pay over any money to the plaintiff, he then brought this action and recovered a verdict in the County Court. It appeared that there was some dispute between the sheriff and the loan company as to the validity of the lease under which the rent was claimed, and that the company had refused to accept the sum of \$135 tendered to them by the defendant on account of their claim, and in point of fact the company had sued the defendant for damages for the seizure in question, but no evidence had been given in this action tending to impeach the validity of the lease between the loan company and Murray.

Held, on appeal from the County Court, that the sheriff might rely on the landlord's claim as a defence to this action, although he had not actually paid over the proceeds of the plaintiff's execution to the landlord.

Appeal allowed with costs, and verdict entered for defendant with costs.

W. A. Macdonald, Q.C., for the plaintiff.

Culver, Q.C., and *Hull*, for the defendant.

KILLAM, J.]

[March 11.]

BUCKNAM v. STEWART.

The Real Property Act—Practice—Plaintiff in issue—Issue under Real Property Act.

A mortgagee of land having applied to bring it under the The Real Property Act, a caveat was filed, and the caveator proceeded by petition for the purpose of establishing his claim, alleging that he had acquired a title from the mortgagor subsequent to the caveatee's mortgage, that the mortgagee's claim was barred by The Real Property Limitation Act, and that he himself was in possession of the property, which he verified by affidavit.

Held, that in the issue ordered to determine the question whether the mortgagee's rights had been barred under the statute, the onus of showing this was upon the petitioner, and he should be the plaintiff.

Haggart, Q.C., for the caveator.

Tupper, Q.C., for the caveatee.