

Divisional Court.] WHITELOCK v. COOK. [Feb. 8.

*Landlord and tenant—Removal of goods before rent due—Illegal distress—
Pretended sale by tenant—Right of tenant to set up title to goods—
Counterclaim—New trial.*

A landlord is not justified in distraining goods which had been removed off the demised premises before the rent accrued due, though had the rent been due the removal would have been fraudulent; and the tenant is not precluded from setting up his title to the goods because of a pretended sale of them, the effect of which was to vest the possession but not the property in the goods in the alleged purchaser.

To the action for the illegal distress in the County Court the defendant counterclaimed for rent due, but such counterclaim not having been tried, the action was remitted back to the County Court to be there dealt with, regard to be had to the finding of the Court as to the rights of the parties.

Bicknell, for plaintiff. D. E. Thomson, Q.C., for defendant.

Armour, C. J., Falconbridge, J., Street, J.] [March 8.

BROCKBANK v. HOLMES.

Mortgage—Authority of solicitor for mortgagee to receive mortgage money—Execution—Alteration—Evidence—Presumption.

One of the defendants, a widow, agreed to purchase land, and employed a solicitor to act for her in the matter of the purchase. The property was subject to a mortgage for \$3,500, which the mortgagee required should be paid, and the solicitor arranged with P. to advance \$2,500 of the amount, with the plaintiff to advance \$500 upon the interest of the defendants in other lands, and he himself promised to advance the remainder of the sum required, the widow having also a little money of her own. A mortgage from the widow to P. for \$2,500 was accordingly executed; also a mortgage from the defendants to the plaintiff for \$500; and a mortgage from the widow to the solicitor for \$300. All these mortgages and a conveyance from the vendor to the widow were registered by the solicitor, who had previously received from the plaintiff \$400 of the amount the plaintiff had agreed to advance, giving a receipt for the amount "for investment *Jemima and Christiana Holmes mortgage*," and making the affidavit of execution of the mortgage. Shortly afterwards the plaintiff gave the solicitor \$90 further of the amount he was advancing, and the solicitor gave him credit for \$10 which he owed to the plaintiff. From the time of the completion of the documents the defendants never made any further inquiry as to the matter, and only went to the solicitor to pay him his account for his services and to ask him for the mortgage deed for the \$3,500, which they assumed he had paid, and supposed he would have, but