

Act and was refused on the ground that the affidavits of justification of bail were not sufficient. The affidavits were amended and the application was renewed on substantially the same grounds (non-service of the writ of summons) before the presiding judge, at Sydney.

Held, following *R. v. Pickles*, 12 L.J.Q.B. 40, that the application must be dismissed, a previous application having been made on the same grounds to another judge and refused.

D. A. Cameron, for prosecutor. *Gunn*, for defendant, applicant.

Province of Manitoba.

KING'S BENCH.

Mathers, C.J.]

[September 14.

WEST WINNIPEG DEVELOPMENT CO. v. SMITH.

Practice—Costs—Landlords and Tenants Act—Summary proceedings for ejectment.

The costs of a summary proceeding under the Landlords and Tenants Act, R.S.M. 1902, c. 93, to eject a tenant are the costs of an action in the King's Bench and taxable on the same scale.

Maclean, for landlord. *Blackwood*, for tenant.

Prendergast, J.]

[September 14.

MILLER v. SUTTON.

Vendor and purchaser—Cancellation of agreement of sale for default in payment—Recovery by purchaser of money paid on account—Counterclaim.

In an action by the vendor of land against the purchaser for specific performance of the agreement to purchase or in the alternative for cancellation of the agreement for default in subsequent payments, if the purchaser has acquiesced in the cancellation after notice thereof served on him by the vendor, he cannot recover back by counterclaim the money which he had originally paid on account of the purchase.

Hoskin, K.C., for plaintiff. *Galt*, K.C., for defendant.