

Full Court.]

INGRAHAM v. MCKAY.

[Dec. 20, 1912.

*Landlord and tenant—Sale of tenant's goods under execution—
Purchase by landlord—Right of off-set claim for rent—
Consent to sale.*

Where the goods of a tenant are sold under execution the sheriff, in order to give a good title must first apply the proceeds in satisfaction of the landlord's claim for rent.

Where the sale, with the assent of the landlord, is held upon the demised premises, the landlord himself becoming the purchaser, he is entitled, notwithstanding such assent, to off-set his claim for rent against the claim for the purchase price of the goods, and is not driven to an action on the case against the sheriff. *Green v. Austin*, 3 Camp. 258, where the sheriff sold tortiously, distinguished.

J. L. Ralston, for appellant. *McIlish*, K.C., for respondent.

Province of Saskatchewan.

SUPREME COURT.

Newlands, J.]

PIGEON v. PRESTON.

[Dec. 27, 1912.

Landlord and tenant—Breach of covenant not to assign—Remedy for—Notice to quit—Re-entry—Waiver.

Held, 1. If a lease contains a covenant not to assign the lease without the lessor's consent (and that in such event the lessor could re-enter) and such covenant is violated by the lessee, the proper remedy for the lessor is to enter and terminate the lease; and notice to quit at a future date and a distraint made for the rent cannot be said to be evidence of a re-entry, as the lessee was thus recognised as a tenant by the lessor.

2. Where a lease contains a covenant not to assign without lessor's consent and an assignment of the lessee's interest in the lease is made, and thereafter the lessor assigns his title, and the lessor's assignee, subsequently learning of the prior assignment by the lessee, accepts rent from the party in possession under the lessee, and later distrained on his goods for other rent, and