

*Held*, KILLAM, J., dissenting, that the lease must be held to be void against execution creditors on account of the excessive amount fixed for rent, and that there was not enough in the other circumstances to distinguish the case from the Coulter one.

Per KILLAM, J.: The circumstances show that the plaintiffs bona fide intended to make a lease, and Murray to accept the position of tenant at the rental named, and the lease should be held to be valid.

Appeal dismissed with costs.

Clark, for plaintiffs.

Culver, Q.C., for defendant.

Full Court.]

KIRCHOFFER v. CLEMENT.

[Feb. 1.

*Bills of Sale Act, R.S.M., c. 6, s. 4—57 Vict., c. 1, s. 2—Growing crops, mortgage of—Affidavit of bona fides—Forms—Deviation from prescribed forms—Interpretation Act, R.S.M., c. 78, s. 8, sub-sec. (u)—Action against sheriff—Evidence—Judgment, proof of—Right of action for price of goods when property not passed—Appeal from County Court—Motion to strike out necessary—Q.B. Act, 1895, Rule 168 (b), (d)—Seed grain mortgage.*

This was an appeal from the decision of the County Court of Brandon in favor of the plaintiff in an action in which he claimed damages from the defendant (the sheriff of the Western District), for the seizure of the grain grown upon the lands of one Murray, under an execution in his hands.

The plaintiff claimed the grain under a chattel mortgage for the purchase money of seed grain supplied to Murray in the spring of the same year. Murray, being in want of seed at that time, applied to the plaintiff, who gave him an order on a firm of grain dealers for the amount required, and took the mortgage in question, which was completed and registered before Murray actually got the grain. The dealers afterwards supplied the grain to Murray and charged the price to the plaintiff, who paid it.

The affidavit of bona fides attached to the mortgage contained a statement that the mortgage was taken "for seed grain," but did not contain the full statement required by the statute, 57 Vict., c. 1, s. 2, "that the same is taken to secure the purchase price of seed grain."

It was contended at the trial that the evidence showed that the mortgage had not been given as security for the purchase price of seed grain within the meaning of the statute, but only as security for money advanced by plaintiff to Murray for the grain, and was, therefore, wholly void; also that the mortgage was void for want of the full statement required by the Act to be inserted in the affidavit; and the sheriff did not prove the judgment against Murray, on which the execution in his hands had been issued.

*Held*, TAYLOR, C.J., dissenting, that the chattel mortgage had really been taken to secure the purchase price of seed grain, and was, therefore, good and valid as against the mortgagor, and that no affidavit or registration was necessary to protect the plaintiff's rights as against the mortgagor.

*Held*, also, unanimously, that in a case like the present where some third party brings an action against the sheriff for seizure of goods under an execu-