1940
*March 15.
*May 21.

COMMERCIAL CREDIT CORPORATION OF CANADA, LIMITED (PLAINTIFF) ..... APPELLANT;

AND

NIAGARA FINANCE COMPANY, LIMITED (DEFENDANT) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Conditional sales—Conditional sale agreement not registered—Conditional Sales Act, R.S.O. 1937, c. 182, s. 2 (1)—Bailiff's sale under executions against conditional purchaser—Purchaser at such sale not "a subsequent purchaser claiming from or under" the conditional purchaser.

T. purchased and took possession of a motor car under a conditional sale agreement, which was not registered as provided by s. 2 (1) of the *Conditional Sales Act*, R.S.O. 1937, c. 182. T. defaulted in payments and appellant, assignee of the conditional vendor, became entitled under the agreement to re-take from T. possession of the car, but did not do so. A bailiff, acting under executions against T., seized the car and, at bailiff's sale, sold it to respondent who took possession. Appellant sued respondent for the amount unpaid under the conditional sale agreement, or possession of the car. Respondent claimed that it was a purchaser for valuable consideration in good faith and without notice of appellant's claim and that the conditional sale agreement, for want of registration, was invalid as against it.

Held (reversing judgment of the Court of Appeal for Ontario, [1940] O.R. 115): Appellant was entitled to judgment. Respondent, as purchaser from the bailiff, was not a subsequent purchaser claiming "from or under" T. within the meaning of s. 2 (1) of said Act, and therefore could not invoke that enactment; therefore respondent acquired only the interest in the car which the bailiff had the right to sell, that is, only the execution debtor's (T.'s) interest or equity in it.

APPEAL by the plaintiff (by special leave granted by the Court of Appeal for Ontario) from the judgment of the Court of Appeal for Ontario (1) which court (Robertson C.J.O. dissenting) dismissed the plaintiff's appeal from the judgment of His Honour Judge Livingstone, of the County Court of the County of Welland, dismissing the action. The action was brought to recover the sum of $245.25 (as damages for conversion) and interest thereon, as being the unpaid balance of purchase price of a motor car, or in the alternative a declaration that the plaintiff was entitled to possession of the car and an order directing

(1) [1940] O.R. 115; [1939] 4 D.L.R. 311.

*Duff C.J. and Crocket, Davis, Kerwin and Hudson JJ.

defendant to deliver up possession. The car had been purchased by defendant at a bailiff's sale under executions against one Teakle, who had purchased the car under a conditional sale agreement, which was not registered, and under which Teakle had made default in payment. Plaintiff, who was assignee of the conditional vendor, claimed the right to possession of the car. Defendant claimed that it was a purchaser of the car in good faith for valuable consideration and without notice of the claim of the plaintiff or any other person through whom plaintiff claimed title, and pleaded s. 2 (1) of the *Conditional Sales Act,* R.S.O. 1937, c. 182.

H. F. Parkinson K.C. for the appellant.

A. L. Brooks K.C. and *J. D. Cromarty* for the respondent.

The judgment of the Chief Justice and Davis J. was delivered by

DAVIS J.—A bailiff of the First Division Court of the County of Welland in the Province of Ontario, acting under executions issued pursuant to judgments of the said Court, seized the motor car in question in these proceedings and purported to sell the same under the executions to the respondent. The purported sale between the bailiff and the respondent was carried out and possession of the car delivered by the bailiff to the respondent. The car some six months prior to the seizure and sale had been purchased by Robert Teakle, the execution debtor, from Mills Motor Sales under a conditional sale agreement. Mills Motor Sales, on its part, assigned the conditional sale agreement to the appellant. Teakle took possession of the motor car at the time of the making of the conditional sale agreement and continued in possession until the time of the bailiff's seizure. In the interval, however, he had made default in payments called for under the agreement and by the terms of the agreement the appellant (as assignee of the conditional vendor) had become entitled to re-take possession of the car, though it had not in fact done so. It is plain that the property in the car never passed from the conditional vendor to the conditional purchaser. Subsequent to the

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bailiff's sale and delivery of the car to the respondent, the appellant made demand upon the respondent for possession of the car and, upon refusal to deliver or to pay the balance owing under the conditional sale agreement, the appellant commenced this action in the County Court of the County of Welland against the respondent, claiming damages for detention or conversion of the car. The amount of the purchase price unpaid under the conditional sale agreement at the time amounted to $245.25, together with arrears of interest.

The respondent defended the action upon the ground that it became a purchaser for value in good faith for valuable consideration without any notice of the appellant's claim and took the position that the conditional sale agreement, not having been filed, was invalid as against the respondent. It is admitted that a copy of the conditional sale agreement had not been filed in the office of the Clerk of the County Court as provided by subsec. (1) (*b*) of sec. 2 of the Ontario *Conditional Sales Act,* R.S.O. 1937, ch. 182. The County Court Judge dismissed the appellant's action and the Court of Appeal for Ontario affirmed the judgment, Robertson, C.J.O., dissenting. By special leave of the Court of Appeal, a further appeal was taken to this Court.

A bailiff or sheriff to whom an execution is directed has authority only to seize and sell the property of the execution debtor. While the execution debtor here may have been in possession of the motor car, he had never acquired the property in the car. But by the combined force of sec. 165 of the *Division Courts Act,* R.S.O. 1937, ch. 107, and sec. 18 of the *Execution Act,* R.S.O. 1937, ch. 125, the bailiff had authority to sell the interest or equity of the execution debtor in the chattel and the sale by the bailiff, being under executions against goods issued out of a division court, would convey whatever equitable or other interest the execution debtor had or was entitled to in or in respect of the chattel at the time of the seizure.

It is not disputed that the bailiff seized and sold the motor car as if it had been the property of the execution debtor and no doubt the respondent purchased the car from the bailiff thinking it was acquiring the ownership

of the car. But a purchaser from a sheriff or bailiff acquires only the interest in the goods which the sheriff or bailiff had the right to sell.

As Middleton J. (as he then was) said in *Re Phillips and La Paloma Sweets Ltd.* (1):

> It is elementary law that an execution creditor, apart from some statutory provision, has no greater right than the execution debtor, and that the sheriff's sale can only give to the purchaser the right and title of the debtor; so here the applicant has no greater or other right than the execution debtor unless he can point to some statute assisting him.

And as was said in *Overn* v. *Strand* (2):

> A purchaser, therefore, at a sale under execution is under no obligation to go behind the writ, but, in order to make sure that he will acquire title to the goods he buys, he must see that the court issuing the writ had jurisdiction to do so; that the writ is regular on its face, and that the goods sold by the sheriff are the goods of the execution debtor.

Apart, then, from any statutory provision which may be invoked by the respondent in the circumstances of the case to defeat the appellant's claim to the property in the car, the respondent purchased from the bailiff nothing more than the execution debtor's interest or equity in the car.

But there is really no controversy about the position of the bailiff and his sale. The real controversy turns upon the provisions of the *Conditional Sales Act,* R.S.O. 1937, ch. 182. What the respondent has said throughout is that by virtue of sec. 2 the appellant was not entitled to set up the conditional sale as against the respondent because a copy of the agreement had not been filed in the office of the Clerk of the County Court of the county in which the conditional purchaser resided at the time of the agreement to sell and that it, the respondent, had purchased from the bailiff without notice, in good faith, and for valuable consideration. But the respondent, to gain advantage under said sec. 2, must be a subsequent purchaser "claiming from or under" the original conditional purchaser. That is exactly what the respondent claims to be and if it is, then the conditional sale agreement which provided that the ownership was to remain in the conditional vendor until payment, is invalid as against the respondent.

(1) (1921) 51 Ont. L.R. 125, at 127.

(2) [1931] S.C.R. 720, at 733-4.

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The determination of the appeal turns solely upon the question of the proper construction of sec. 2 of the *Conditional Sales Act*, that is, whether or not the respondent as purchaser from the bailiff became "a subsequent purchaser * * * claiming from or under" the original conditional purchaser. In my opinion the respondent did not; it purchased whatever it did purchase from the bailiff and it got only what the bailiff had to sell. We are not entitled to strain the plain language of the section so as to bring the respondent within its reach as a subsequent purchaser "from or under" the original conditional purchaser. It is to be observed that subsec. (1) of sec. 2 is for the protection of "a subsequent purchaser or mortgagee claiming from or under the purchaser, proposed purchaser or hirer, without notice in good faith and for valuable consideration." Subsec. (3) of the same section specifically provides that where the possession of goods is delivered "to any person for the purpose of resale by him in the course of business" such provision (i.e., subsec. (1)) "shall also, as against his creditors, be invalid and he shall be deemed the owner of the goods unless the provisions of this Act have been complied with." As Meredith, C.J. C.P., said in *Re Alcock Ingram & Co. Ltd.* (1) in considering the statute:

> In short, subsec. (1) is for the benefit of "subsequent purchasers or mortgagees"; subsec. (3) is for the benefit of creditors.

It may be observed that the *Bills of Sale and Chattel Mortgage Act*, R.S.O. 1937, ch. 181, which is a statute *in pari materia*, provides by sec. 4 that

> Every mortgage of goods and chattels in Ontario, which is not accompanied by an immediate delivery and an actual and continued change of possession of the things mortgaged, shall be registered * * *

as stipulated in the statute; and by sec. 7,

> If the mortgage and affidavits are not registered as by this Act provided, the mortgage shall be absolutely null and void as against creditors of the mortgagor, and as against subsequent purchasers or mortgagees in good faith for valuable consideration.

The word "creditors" as defined by sec. 1 (*b*) of that Act includes creditors having executions against the goods and chattels of a mortgagor in the hands of a sheriff or other officer.

(1) (1923) 53 Ont. L.R. 422, at 430.

While I do not find it necessary to resort to the history of the Ontario legislation under the *Conditional Sales Act* to determine the question in issue, it is reassuring to the view I take of the particular section of the statute involved in this appeal to follow through the course of the legislation. The statute was originally enacted in 1888 by 51 Vict., ch. 19, to come into force on the 1st of January, 1889. The statute only applied to manufactured goods and chattels, and conditional sales were only to be valid as against subsequent purchasers or mortgagees without notice in good faith for valuable consideration in the case of such goods which at the time possession was given had the name and address of the manufacturer, bailor or vendor of same painted, printed, stamped or engraved thereon or otherwise plainly attached thereto and unless the bailment was evidenced in writing signed by the bailee or his agent; or, alternatively, where there was registration of the conditional agreement with the Clerk of the County Court of the county in which the bailee or conditional purchaser resided at the time the bailment or conditional purchase was made. The original statute, with slight amendments made by 53 Vict., ch. 36, and by 60 Vict., ch. 14, sec. 80, was carried into the Revised Statutes of Ontario 1897 as ch. 149. Then in 1911 (by 1 Geo. V, ch. 30), the Act was substantially changed into somewhat its present form and as such was carried into the Revised Statutes of 1914 as ch. 136. In the 1911 statute the word "goods" was defined so as to include "wares and merchandise" and the statute was made more comprehensive in its scope in that it was no longer limited to manufactured goods. The invalidity of a conditional sale accompanied by delivery of possession as against a subsequent purchaser or mortgagee where a copy of the agreement was not filed in the office of the Clerk of the County or District Court, remained. But the special provision (now found in amended form as subsec. (3) of sec. 2 of the present Act) that where the delivery is made to a trader or other person for the purpose of resale by him in the course of business, the agreement "shall also, as against his creditors, be invalid and he (the conditional purchaser) shall be deemed the owner of the goods," which appeared for the first time in the 1911 *Conditional Sales Act*, had

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been introduced originally into the *Bills of Sale and Chattel Mortgage Act* in 1892 (by 55 Vict., ch. 26, secs. 5 and 6) whereby it was provided that if possession of goods was to pass to a trader or other person for the purpose of resale by him in the course of business, but not the absolute ownership until certain payments were made or other considerations satisfied, "any such provision as to ownership shall as against creditors, mortgagees or purchasers be void, and the sale or transfer be deemed to have been absolute," unless the agreement was in writing signed by the parties to the agreement, or their agents, and unless such writing was filed in the office of the County Court Clerk of the county in which the goods were situate at the time of making the agreement. Subsecs. (3) and (4) of sec. 3 of the 1911 statute, 1 Geo. V, ch. 30, produced into the *Conditional Sales Act* the provision as to delivery to a trader or other person for the purpose of resale in the course of business, and sec. 10 repealed the old provision that had been sec. 41 of the *Bills of Sale and Chattel Mortgage Act,* R.S.O. 1897, ch. 148. In the 1927 revision of the Ontario statutes the *Conditional Sales Act* as it then stood became ch. 165 and remained substantially unchanged. The present statute, R.S.O. 1937, ch. 182, has remained practically unaltered from 1927.

It may not be without interest that the draft Conditional Sales Act, revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada in 1922 (See Falconbridge: Cases on the Sale of Goods (1927), pp. 682-88), provided (at p. 683) that:

> After possession of goods has been delivered to a buyer under a conditional sale, every provision contained therein whereby the property in the goods remains in the seller shall be void as against subsequent purchasers or mortgagees claiming from or under the buyer in good faith, for valuable consideration and without notice, and as against creditors of the buyer who at the time of becoming creditors have no notice of the provision and who subsequently obtained judgment, execution, or an attaching order, under which the goods, if the property of the buyer, might have been seized, and the buyer shall, notwithstanding such provision, be deemed the owner of the goods, unless the requirements of this Act are complied with.

The subsequent revision of the Ontario statute in 1927 did not adopt the draft by giving protection, where the conditional sale agreement was not filed, not only to sub-

sequent purchasers or mortgagees but to "creditors of the buyer who at the time of becoming creditors have no notice of the provision and who subsequently obtained judgment," etc. The Legislature adhered to the provision as it had stood in the statute whereby the invalidity was limited to "subsequent purchasers or mortgagees claiming from or under" the original purchaser, except in the case where the goods were delivered "to any person for the purpose of resale by him in the course of business," in which latter case the invalidity was extended to creditors.

It is plain that the Legislature in enacting the provisions of the *Conditional Sales Act* did not, except in the case of the delivery of possession to a person for resale in the course of business, intend the protection to extend to creditors. Of course the respondent is not a creditor. It is a purchaser, but a purchaser from a bailiff who had no higher title to pass than that of the execution debtor. The bailiff in enforcing the creditors' judgments under the executions never acquired the property in the motor car. The respondent cannot be said to be a subsequent purchaser "from or under" the conditional purchaser, within the meaning of subsec. (1) of sec. 2; it bought in the execution creditors' rights against the car. It is contended, in effect, by counsel for the respondent that the statutory provision in favour of "subsequent purchasers or mortgagees" ought to be interpreted so as to give to it what is called a convenient and practical application. But in *Rex* v. *Commissioners of Customs and Excise* (1), Viscount Dunedin in the House of Lords referred to the "stern warnings" that had been given in the cases

> to those who in order to read in words into a statute which are not there, or to divert words used from their ordinary and natural meaning, permitted themselves to speculate as to what the aim and attainment of the Act was likely to be.

I would allow the appeal and direct judgment to be entered for the appellant in the sum of $250 with costs of the action and of the appeal to the Court of Appeal for Ontario. It was a condition of the leave to appeal granted by the Court of Appeal that the appellant should not ask for costs of its appeal to this Court.

(1) [1928] A.C. 402, at 409.

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Crocket J.

CROCKET, J.—This appeal turns entirely upon the question whether the conditional sale agreement, upon which the appellant plaintiff relied as the basis of its action, was invalidated as against the respondent defendant, which purchased the automobile described therein at a public bailiff's sale, by the appellant's failure to file a true copy of the agreement within ten days after its execution in the office of the Clerk of the District Court of the county or district in which the original purchaser resided, as provided by sec. 2 (1) of the *Conditional Sales Act,* R.S.O. 1937, ch. 182.

The bailiff seized and sold the automobile as the property of one Teakle under two executions issued upon judgments recovered against the latter in a Division Court, one of them at the suit of the respondent company. Teakle, the judgment debtor, was the purchaser or hirer under the conditional sale agreement. The trial judge found that the respondent defendant purchased the automobile at the bailiff's sale in good faith and without notice of the appellant plaintiff's lien and that the respondent defendant was a subsequent purchaser from or under the judgment debtor within the meaning of sec. 2 (1) of the *Conditional Sales Act,* and therefore dismissed the plaintiff's action with costs. His judgment was maintained by the Court of Appeal *per* Masten and McTague, JJ.A.; Robertson, C.J.O., dissenting.

It is not doubted that failure to file a copy of the conditional sale agreement within the prescribed time would invalidate the plaintiff's title to the automobile under sec. 2 (1) if the defendant were a subsequent purchaser *claiming from or under* Teakle, within the meaning of that section, or that, if the respondent defendant, by reason of his purchase of the automobile at the bailiff's sale under the Divisional Court executions, did *not* become a purchaser *from or under* Teakle as the conditional sale purchaser or hirer, the bailiff's sale would not avail to pass the property therein.

The bailiff had no authority to sell the automobile as the property of the judgment debtor. He might have offered for sale, in virtue of the provisions of the *Execution Act,* R.S.O., 1937, ch. 125, the judgment debtor's equitable

interest in the automobile, but nothing more. In doing so, the bailiff obviously was not acting either within the authority or in the interest of the judgment debtor but solely under the direction of adverse writs of execution, which were issued at the suit of the judgment creditors, one of whom, as appears, was the respondent company itself.

Sec. 2 (1) of the *Conditional Sales Act* expressly limits the protection provided thereby to " subsequent purchasers or mortgagees claiming from or under the purchaser, proposed purchaser or hirer," etc., and, though one can readily understand a court's inclination to give these words as large and liberal a construction as possible and thus extend the protection to all *bona fide* subsequent purchasers without notice, I can find nothing in any part of sec. 2 which can safely be relied upon as necessarily implying any such intention on the part of the Legislature. Had the intention been that all unregistered conditional sales agreements should be deemed null and void against all subsequent purchasers or judgment creditors, I cannot think that the enactment would have been framed, as it has been, with such a definite limitation as that indicated, or that the Legislature would have made the special provision it did in subsec. (3) with respect to creditors, viz: that

> where the delivery is made to any person for the purpose of resale by him in the course of business, such provision [the clause of the conditional sale agreement, which provides that the ownership of the specified goods shall remain in the seller or lender for hire until full payment of the purchase price] shall *also, as against his creditors,* be invalid, and he shall be deemed the owner of the goods unless the provisions of this Act have been complied with.

For these reasons I agree with the conclusion arrived at by the learned Chief Justice in his dissenting judgment, would allow the appeal and direct the entry of judgment for the appellant for $250, the proved value of the automobile, with costs of the action and of the appeal to the Appeal Court. The order granting special leave to appeal having been granted to the appellant by the Appeal Court on the understanding that it should have no costs of the appeal to this Court in any event, I agree that there should be no costs on this appeal.

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Kerwin J.

KERWIN J.—The particular point arising for determination in this appeal depends upon the proper construction of subsection 1 of section 2 of *The Conditional Sales Act*, Revised Statutes of Ontario, 1937, chapter 182. That subsection is as follows:

> 2. (1) Where possession of goods is delivered to a purchaser, or a proposed purchaser or a hirer of them, in pursuance of a contract which provides that the ownership is to remain in the seller or lender for hire until payment of the purchase or consideration money or part of it, as against a subsequent purchaser or mortgagee claiming from or under the purchaser, proposed purchaser or hirer, without notice in good faith and for valuable consideration, such provision shall be invalid, and such purchaser, or proposed purchaser or hirer, shall be deemed the owner of the goods, unless
>
> (*a*) the contract is evidenced by a writing signed by the purchaser, proposed purchaser or hirer or his agent, stating the terms and conditions of the sale or hiring and describing the goods sold or lent for hire; and,
>
> (*b*) within ten days after the execution of the contract a true copy of it is filed in the office of the clerk of the county or district court of the county or district in which the purchaser, proposed purchaser or hirer resided at the time of the sale or hiring.

At the trial, the Judge of the County Court of the County of Welland, and upon appeal, the majority of the Court of Appeal for Ontario, decided that the defendant respondent, Niagara Finance Company, Limited, fell within the expression "subsequent purchaser or mortgagee claiming from or under the purchaser." The Chief Justice of Ontario dissented. The plaintiff, Commercial Credit Corporation of Canada, Limited, now appeals pursuant to leave granted by the Court of Appeal.

Possession of a motor car had been delivered to one Teakle under such a contract as is mentioned in the subsection but a copy of the agreement was not filed in the office of the clerk of the county court. The ownership of the motor car and all rights under the contract of the other party thereto became vested in the appellant. Judgments were recovered against Teakle in two Division Court actions by creditors of his, and at a bailiff's sale, held in pursuance of executions issued on such judgments, the respondent claims to have become the purchaser of the motor car. The finding of the trial judge, that the respondent was a purchaser for value and without notice of the conditional sale agreement, has not been impugned.

It is clear from the provisions of *The Conditional Sales Act* that in default of filing a conditional sale agreement, a conditional purchaser is not deemed to be the owner of the goods as against his creditors, except "where the delivery [of the goods] is made to any person for the purpose of resale by him in the course of business" (subsection 3 of section 2). The bailiff, therefore, had no power to seize and sell the automobile, although under section 18 of *The Execution Act*, R.S.O. 1937, chapter 125, he could seize and sell Teakle's interest in the car. It is argued that, the bailiff's possession being referable to his right so to seize Teakle's interest in the car, the subsequent purported sale by him of the car itself to the respondent, who gave value for the car without notice of the conditional sale agreement, thereby entitled the respondent to hold the car free from any claim of the appellant.

This conclusion, in my view, is unsound. The respondent is certainly not a purchaser *from* Teakle, and a fair reading of all the provisions of the Act impels me to the conclusion that it is not purchaser *under* him. That expression might envisage circumstances where Teakle would sell the car to A, who in turn would sell to C, but not a case where a sale is made under process of law. In such a case only Teakle's interest in the car could be sold and not the article itself.

The order appealed from should be set aside and there should be substituted therefor a judgment for the appellant against the respondent for the value of the car, $250. The appellant is entitled to its costs of the action and of the appeal to the Court of Appeal. In accordance with the condition attached to the order granting leave to appeal, there will be no costs of the appeal to this Court.

HUDSON, J.—I agree that the right of the defendant, if any, to retain the automobile in question must arise under the provisions of the *Conditional Sales Act*.

I also agree that this Act does not and was not intended to protect creditors, but the claim of the defendant, with which we have to deal here, is in its capacity as a purchaser and not as a creditor.

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Hudson J.

The *Conditional Sales Act* was intended to and does in its terms protect purchasers of a defined class, namely, purchasers in good faith for value without notice "from or under" the original purchaser. The defendant did buy in good faith for value without notice; so in my view the case must be determined by the construction which should be placed upon the words "from or under."

It is clear that the defendant did not buy from the original purchaser, nor could the bailiff be considered as the agent of the original purchaser in making the sale.

The last and more difficult question is whether or not the sale was made "under" the original purchaser. I was impressed by the views expressed by Mr. Justice Masten in the Court of Appeal, that the word "under" meant "through" and that anyone who derived title because of the existence of the original purchaser's conditional right should be considered as a purchaser entitled to the benefit of this Act. However, on consideration I have come to a contrary opinion. The legislature may have intended the Act to extend to purchasers such as the defendant but, if so, I think the intention should have been more clearly expressed, where an important change in the common law was contemplated.

The meaning of the word "under" must, of course, largely be determined by the context of the statute in which it is used. This has been discussed by my brothers Davis and Kerwin and I shall add no more than a reference to two old cases illustrating the ways in which the word was interpreted by the courts.

The first is *Stanley* v. *Hayes* (1). In that case a lease contained a covenant by the lessor for quiet enjoyment, providing that the lessee should and lawfully might peaceably and quietly have, hold, use, occupy, possess and enjoy the demised premises for and during the term, without any let, suit, trouble, denial, disturbance, eviction or interruption whatsoever, of or by the defendant, his heirs or assigns, or any other person or persons lawfully claiming or to claim by, "from or under" him, them, or any of them. It appeared that the lessor was at that time liable for land taxes and the collector of land taxes entered upon the premises and seized certain goods and chattels there

(1) (1842) 3 Q.B. 105.

as a distress for the amount of the rent which was due before the making of the indenture. It was held by the Court of Queen's Bench that this was not a breach of the covenant for quiet enjoyment. It was stated by Lord Denman, Chief Justice, at page 108:

> We cannot extend the remedy provided by the indenture. Let, suit, disturbance or interruption by the defendant, or others claiming by, from, or under him, are different things from the injury here complained of, those words implying a claim by title from the lessor. Here the claim was against him.

The second is the case of *Pennell* v. *Walker* (1), where it was held that a provision of the Common Law Procedure Act giving a remedy to persons claiming land "through or under" a deed did not extend to assignees in bankruptcy.

Under the circumstances, I think that the appeal should be allowed with costs of the action and in the Court of Appeal but without costs in this Court.

Appeal allowed.

Solicitors for the appellant: *Parkinson, Gardiner & Willis.*

Solicitor for the respondent: *J. H. Flett.*

(1) (1856) 18 Common Bench 651.