

defendant as to £30 16s. 0d. pleaded payment, and as to the balance set off £164 4s. 0d. for the price of the cattle. Bankes, J., who tried the action, held that in the circumstances of the case, the plaintiffs could not be bound to pay to Ford more than £27 16s. 4d. being the difference between the amount realized and the amount of the claims of the creditors and the plaintiffs' own debt and charges, and therefore as to that sum the set-off was good, but that it was bad as to the residue being in the nature equitable, and subject to the prior equitable claims upon the fund.

LANDLORD AND TENANT—DISTRESS — PURCHASE BY LANDLORD OF GOODS DISTRAINED—USER OF GOODS DISTRAINED BY LANDLORD —CONVERSION—DISTRESS FOR RENT ACT, 1737 (11 GEO. II. c. 19), s. 19—(1 GEO. V. c. 37, s. 53 (ONT.)).

The *Plasgycoed Collieries v. Partridge* (1912) 2 K.B. 345. In this case the plaintiffs were lessees of a coal mine, the royalties, payable under the lease to the defendants the lessors being in arrear, the defendants distrained therefor certain ponies of the plaintiffs and certain wagons which they had hired from a wagon company, the goods distrained, and the defendants purported to buy them at the appraised value. The wagons they delivered up to the wagon company from whom they had been hired at their demand, although no sum was due for the hire of the wagons; the ponies the defendants used for their own purposes. The action was brought by the plaintiffs for conversion of the ponies and wagons, the sale to the defendants being invalid, and the defendants relied on s. 19 of the Distress Act, 1737 (see 1 Geo. V. c. 37, s. 53 (Ont.)) as relieving them from liability for conversion, and limiting their liability to the special damage, if any, sustained by the plaintiffs, and the Judge of the County Court, who tried the action, gave effect to that contention, but the Divisional Court (Hamilton and Lush, JJ.), held that the Act did not apply, as the acts complained of, were not done by defendants in their capacity of distrainers, nor in the course of the distress, but in their supposed capacity as owners of the goods by purchase and after completion of the distress.

JUSTICES—SUMMARY CONVICTION—UNSWORN TESTIMONY — RE-HEARING — JURISDICTION.

*Rex v. Marsham* (1912) 2 K.B. 362. This was a motion to quash a conviction in the following circumstances. The defen-