

LANDLORD AND TENANT—SUB-LEASE IN BREACH OF COVENANT NOT TO SUB-LET—FORFEITURE—WRIT CLAIMING POSSESSION—SERVICE OF WRIT—ELECTION OF LESSOR TO DETERMINE TENANCY—SUBSEQUENT PAYMENT OF RENT BY OCCUPIER TO SUB-LESSEE—ESTOPPEL.

Serjeant v. Nash (1903) 2 K.B. 304, was an action to recover damages for a wrongful distress. The facts were somewhat complicated. A lessee, bound by a covenant not to assign or sub-let without leave, created a yearly tenancy in favour of the plaintiff; he also on the same day without leave mortgaged the term by way of a sub-lease. The head lease contained a proviso for re-entry on breach of any of the covenants by the lessee. The lessee was subsequently adjudicated bankrupt, and the mortgage being in default a receiver was appointed, to whom the plaintiff paid a quarter's rent. Before the next quarter's rent became due the head lessor served a writ of ejectment on the plaintiff; the writ did not specify any cause of forfeiture. After appearance in the action, but before delivery of the statement of claim specifying the cause of forfeiture, the plaintiff paid another quarter's rent to the receiver. He refused to pay the next quarter's rent and the receiver distrained, and the action was brought against the receiver for a wrongful distress. The action was tried by Darling, J., who gave judgment for the plaintiff, and the Court of Appeal (Collins, M.R., and Stirling, and Mathew, L.JJ.) affirmed his decision. On the part of the defendants it was contended by the plaintiffs that the action of the head lessor could not affect the relation of landlord and tenant between the plaintiff and the mortgagee, and that, at all events, by payment of rent after the action was commenced the plaintiff was estopped from disputing the defendants' title. On the other hand it was contended that there was a final determination of the tenancy under the lease when the head lessor commenced his action, and this the Court of Appeal held to be the correct view, and that the payment of the rent under the circumstances created no estoppel disentitling the plaintiff to shew that his landlord's title had determined when the distress was made.

EXECUTOR—ADMINISTRATOR—CONTINGENT LEGACY WITHOUT INTEREST—APPROPRIATION OF INVESTMENT TO ANSWER CONTINGENT LEGACY—LOSS ON INVESTMENT.

In re Hall, Foster v. Metcalfe (1903) 2 Ch. 226. In this case the Court of Appeal (Williams, Romer, and Cozens-Hardy, L.JJ.) were