

SECOND DIVISIONAL COURT.

DECEMBER 7TH, 1917.

CYCLONE WOVEN WIRE FENCE CO. v. TOWN OF
COBOURG.

*Landlord and Tenant—Agreement—Construction—Lease—Option
of Purchase—Relinquishment—Distress for Rent—Chattels
Seized Bought in by Landlord—Property not Passing—
Damages—Loss of Credit from Wrongful Seizure—Nominal
Damages—Costs.*

Appeal by the plaintiffs from the judgment of BRITTON, J.,
12 O.W.N. 364.

The appeal was heard by MACLAREN, J.A., LENNOX, J.,
FERGUSON, J.A., and ROSE, J.

J. T. Loftus, for the appellants.

F. M. Field, K.C., and W. F. Kerr, for the defendants, re-
spondents.

LENNOX, J., read the judgment of the Court. After stating the facts, he said that the single issue in this case was, whether rent was due at the time of the seizure; and that issue was not dependent upon oral testimony, but upon the construction of the written agreement between the parties. It was not important whether the plaintiffs intended to relinquish their option of purchase of the demised premises, or not, until there was some evidence that they did in fact relinquish it; and there was no evidence to shew a relinquishment in fact; the evidence was to the contrary. The agreement might be treated as a lease: Halsbury's Laws of England, vol. 18, p. 366, para. 815. The plaintiffs entered into possession and occupied the premises under the agreement.

The defendants could not lawfully buy the goods seized and offered by them for sale. The goods which the defendants purported to buy, however, had not been removed from the premises, and the defendants had offered to surrender them to the plaintiffs, though on terms which they had no right to exact. Goods to the value of \$23.50 were regularly, though illegally, sold. As to all the other goods which the auctioneer purported to sell, it was stated at the trial by the plaintiffs' witnesses that the goods had greatly increased in value, were still increasing in value, and were practically not to be obtained in the market. In the circumstances, it would be right to treat the supposed sale to the defendants as passing no title and in effect a nullity.