

*sess. 1, ch. 5.*]—Where the goods of a tenant, which had been mortgaged by him, were distrained for rent and impounded, and were left on the premises in his charge for over three weeks by agreement between him and the bailiff, when on being advertised for sale under the distress they were seized and taken away by the mortgagee:—

*Held*, as regards the mortgagee, that the goods were no longer *in custodia legis*, and that in taking them he had not committed a breach of the pound within the meaning of 2 Wm. & M. *sess. 1, ch. 5. Lantry v. Clark*, 280.

6. *Distress—Conditional Sale of Goods—Lien—Property—“Interest”—Statutes—Repeal—Substitution.*]—An agreement upon the sale of certain machinery and other goods contained a provision that until the balance of the purchase money should be fully paid, the vendor should have a vendor's lien on the goods for such balance, and that no actual delivery of such property should be made, nor should possession be parted with, until such balance and interest should be fully paid. After the sale the vendee took possession of the goods, and subsequently, on the 1st April, 1890, with the assent of the vendor, who surrendered a former lease, the defendants leased to the vendee the premises upon which the goods were situated. Afterwards, and while the balance of the purchase money was still unpaid, the defendants distrained for rent upon the goods in question:—

*Held*, that the stipulation in the agreement for a vendor's lien was inappropriate and inconsistent and must be read out as mere surplusage; and so reading the agreement, the transaction was one of conditional

sale, and, under 57 Vict. ch. 43 (O.), only the interest of the tenant in the goods could be distrained on:—

*Held*, also, that the Act 57 Vict. ch. 43, which repeals sec. 28, sub-sec. 1, of R. S. O. ch. 143, and substitutes a new section therefor, applies to leases made on or after 1st October, 1887, to which the repealed section, by sec. 42 of R. S. O. ch. 143, applied. *Carroll v. Beard*, 349.

7. *Assignment for Creditors—Landlord's Preferential Lien—58 Vict. ch. 26, sec. 3, sub-secs. 4 and 5 (O.).*]—Under 58 Vict. ch. 26, sec. 3, sub-secs. 4 and 5 (O.), the preferential lien for rent extends not only to a year's rent prior to the assignment for creditors, but also to three months' rent thereafter, whether the assignee retains possession or not; and in case the assignee elects to retain possession, the lien extends for such further period, over the three months, as the possession lasts. *Clarke v. Reid*, 618.

#### LANDLORD AND TENANT ACT, 1895.

*Distress—58 Vict. ch. 26, sec. 4—Construction of.*]—See LANDLORD AND TENANT, 4.

R. S. O. ch. 143, sec. 28, sub-sec. 3/—*Sub-tenant—Distress for Rent.*]—See LANDLORD AND TENANT, 2.

#### LAW COURTS ACT, 1895.

*Divisional Court—Jurisdiction—Appeal—Section 44, sub-sec. 3.*]—See APPEAL.