

Eng. Rep.]

MORTON ET AL. V. WOODS ET AL.—REG. V. RUSSELL.

[Eng. Rep.]

but his judgment was reversed by the Lord Chancellor, who held that there had been a tenancy created by the attornment of the mortgagor to the receiver, and that although the receiver had no other interest in the property, that fact did not destroy the tenancy and the power of distress annexed to it. "It is contended," he says, "that the attornment of Aplin had no operation,—not by agreement, because he had no interest in the land to which it could apply, nor by estoppel, because the deed sets forth the rights and interests of all parties, and shows therefore that he had no reversion in the premises to which the power of distress would be incident. It appears to me, however, that the truth of the case appearing by the deed is a reason why the agreement between the parties should be carried into effect, either by giving effect to the intention of the parties in the manner they have prescribed, or by way of estoppel to prevent their denying the acts they have authorised to be done. If the attornment to the mortgage would be good to create a tenancy in the mortgagor, which seems to be provided for by the 11 Geo. 2, c. 19, why should not an attornment to a third person with the consent of the mortgagee operate to create a tenancy, or to estop all parties from denying that such a tenancy exists? The statement in the deed of the character in which Aplin was to be clothed in order to carry into effect the object of the parties, and the proof it affords of his having no previous title in the land, appears to me to furnish no sufficient objection to the validity of the distress in question." There is a distinction between that case and the present; for in it the mortgagor and mortgagee, as well as the receiver, were parties, and the attornment was with the consent of the mortgagee, while here the prior mortgagee is not a party. That distinction is relied upon by Mr. Williams, but it is manifest that the relation of landlord and tenant was created, and it is upon that relation, and not upon the consent of any third party, that the right of distress depends. The cases then may be said to be identical, and upon this point we are bound by authority to hold that although the facts appear upon the face of the instrument, the relation of landlord and tenant is not affected, and the right of distress exists.

The next question is, whether the deed creates any tenancy at all; and it is insisted upon the part of the plaintiffs that if there is any tenancy it is for ten years, and that that being the intention of the instrument it is void as a lease for that term, for want of execution. To that it is answered by the defendants that by the Statute of Frauds (29 Car. 2, c. 3, s. 1), a lease for ten years not in writing shall not be absolutely void, but shall have the effect of an estate at will. It is also contended that as the parties intended to grant a lease for ten years, it is contrary to that intention to hold that an estate at will was created. That might perhaps be so in an ordinary case of a mere lease for years between landlord and tenant, but this instrument is a mortgage, and these further provisions which relate to the tenancy are all meant as a further security for the repayment of the interest, and the intention of the parties must be gathered from the whole instrument. It is not repugnant to the relation

of mortgagor and mortgagee that the tenancy should last for ten years, and so in the first instance that term is mentioned; but then follows the power of re-entry, and it is clear that whatever the nominal duration of the tenancy, if it is in the power of the landlord at any time to enter and put an end to the tenancy by taking possession of the premises, the estate is only an estate at will. It is said that an estate at will cannot last beyond the life of the lessor, and that it was contemplated by this instrument that the mortgagor might continue tenant to the heirs, executors and administrators of the defendants. The law upon this subject is beset with subtle distinctions, but it would rather seem to be the rule that such a tenancy may last after the death of the lessor, unless he shows an intention to determine it in his lifetime. However this may be, the mere circumstance that the power of re-entry is reserved to the heirs, executors and administrators, is not of itself necessarily of effect to prevent the estate from being an estate at will. But, in any view of the case, the Statute of Frauds puts an end to the question; for as the deed was not executed, and the term created by parol only, the tenancy becomes, by the express words of the statute, a tenancy at will. I think, moreover, that upon the true construction of the instrument a tenancy at will was created; although the mortgagee did not execute it, he assented to it, and advanced money upon its execution by the mortgagor.

A point has been made upon the Bills of Sale Act (17 & 18 Vic. c. 36), and it is objected that this instrument is a bill of sale within the meaning of that act, and is therefore void for want of registration. But the court has in this case no power of drawing inferences of fact, and, even if this amounts to an evasion of the act, has no power as a jury to come to that conclusion. I may, however, observe that if this instrument is a bill of sale, every mortgage deed which included personal property, and contained a clause of re-entry, would require registration, and it is evident that no such doctrine could be supported. For these reasons I am of opinion that the judgment of the Court of Queen's Bench is right, and should be affirmed.

CHANNELL, B., BYLES, J., KEATING, J., and CLEASBY, B., concurred.

Judgment affirmed.

QUEEN'S BENCH.

REG. V. RUSSELL.

Quo warranto—Clerk of the peace—1 W. & M. c. 21, s. 6—*Misdemeanour in office*—Decision of Court of competent jurisdiction—Weight of evidence.

The Court of Queen's Bench cannot review the decision of an inferior tribunal on a matter within its jurisdiction, and on which it has heard evidence and arrived at a conclusion.

Where a charge was preferred to a Court of Quarter Sessions under 1 W. & M. c. 21, s. 6, against a clerk of the peace for a misdemeanour in his office, and evidence was taken, and the Court decided that the charges were proved, and dismissed the clerk of the peace from his office and appointed another person in his place.

Held, on a *quo warranto* information against the person so appointed, that the sufficiency of the evidence was a question entirely for the Court of Quarter Sessions, and the decision of that Court could not be reviewed by the Court of Queen's Bench.

[Q. B. 17 W. R. 402.]