

Roche had not, accurately speaking, a *lien*—liens arise not by contract but by operation of law: *Carroll v. Beard* (1896), 27 O.R. 349, 357, 358, 360. The transaction was a conditional sale and subject to the provisions of the Conditional Sales Act.

The defendant Cook did not on the 10th May or thereafter take legal possession of the goods under the Roche agreement or claim.

Cook said he sold the goods to Miss Whyte, his confidential clerk, for \$143; Miss Whyte resold to the defendant Meyers for \$500, one half of which was paid in cash and the other half secured by a "lien-note," which was overdue; payment of it had not been demanded. This transaction was closed and the goods removed on the 17th June.

It was urged that Miss Whyte, having a lien-note, was the owner and a necessary party to the action. But she had no substantial interest in the matter—on the evidence, she was a mere figurehead, representing the defendant Cook.

Applying essentially the same principle that has been often applied to land transactions, the learned Judge was of opinion, without reference to the Conditional Sales Act, that a new time for the performance of the contract by McHale and the plaintiff was substituted for the original provision as to payment, and that the right of possession and the right by payment to convert contingent into absolute ownership was vested in the plaintiff at the time the goods were removed by Meyers on the 17th June.

Before Roche could enforce forfeiture, he was bound to give notice, and such notice as would give a reasonable time for payment. The defendants had no higher rights than Roche had.

There is no direct statutory provision for notice of sale in this case. Sub-sections 2 and 3 of sec. 8 of the Conditional Sales Act, R.S.O. 1914 ch. 136, apply only where the vendor is looking to recover purchase-money beyond what the goods will bring. Sub-section 1 of sec. 8 provides that when the seller retakes possession of the goods for breach of condition he shall retain them for 20 days, and the purchaser may redeem them within that time. The earliest act that could be regarded as a taking of possession was on the 17th June. A proper legal tender of a sufficient sum was made to each of the defendants within the 20 days.

There should be judgment declaring that the goods are the property of the plaintiff and that he was entitled to possession thereof before and at the date of the commencement of the action, and for \$5 damages and the costs of the action—the amount tendered (\$143.75) to be applied in reduction of the costs taxed to the plaintiff.