

LENNOX, J.

MAY 27TH, 1919.

STOCK v. MEYERS AND COOK.

Sale of Goods—Conditional Sale—Agreement—Seizure of Goods under Execution—Pretended Seizure by Assignee of Vendor when in Possession of Bailiff under Execution—Conditional Sales Act, R.S.O. 1914 ch. 136, sec. 8—Retention of Goods for 20 Days—Tender of Balance Due within that Period—Right to Possession—Pretended Sale—Replevin—Damages.

Action to recover goods (shop-fittings) alleged to have been wrongfully taken by the defendants, and for damages.

The action was tried without a jury at a Toronto sittings.

R. S. Robertson, for the plaintiff.

J. M. Ferguson, for the defendant.

LENNOX, J., in a written judgment, said that one McHale was conditional owner of the shop-fittings, and purported to sell them, free of incumbrance, to the plaintiff. McHale got the fittings from one Roche; and, at the time the plaintiff purchased from McHale, there was at least a small sum (about \$28) for interest unpaid and due to Roche. The plaintiff, in good faith and upon reasonable grounds, believed that the purchase-money due to Roche had been or would then be paid in full. Roche, however, asserted that more than the interest was due at this time. The fittings were transferred to the plaintiff by bill of sale, duly registered. The plaintiff became lessee of the premises upon which the fittings were, and paid rent. While the plaintiff was in possession of the fittings on these premises, the defendant Cook seized them under Division Court execution against McHale, on the 4th May, 1918; but on the 17th abandoned the seizure, saying that he had a claim prior to the execution. The defendant Meyers had possession of the goods when they were replevied by the plaintiff. Cook's prior claim was under an assignment of Roche's claim (referred to as a "lien"); Cook purchased Roche's claim and paid to Roche the balance alleged to be owing, \$94.90, on the 10th May, 1918; and on that day purported to take the goods under his "lien."

The contract between McHale and Roche was in the form of a "lien-note," dated the 5th February, 1917—a promissory note for \$729.82, on its face said to be given for the fittings, describing them, and providing that the property should not pass until payment of the note, and that Roche should be at liberty upon default to repossess and sell.