

landlord, and that at all events the sewing machine was pawned for his claim and can be lawfully retained by him.

The plaintiff says that the defendant had no right to take the law into his own hands and detain the sewing machine by exercising restraint.

As to the principle invoked by the plaintiff, there can be no doubt. A landlord has no right to retain, without judicial process, and by force, the effects of an outgoing tenant; but this did not take place in the present case. Here the defendant did not use any force or exercise any restraint. Hodgson, of his own accord, agreed to leave the sewing machine in the defendant's possession, to secure the payment of the balance which he owed him. When Hodgson gave up and left the rooms the sewing machine was affected by the lessor's privilege for the balance then due of the rent. The plaintiff admits this, and also that it would have existed for eight days more, and could have been preserved by means of an attachment in recaption made during that period.

The landlord's privilege is founded upon articles 1619 and 1623 of the Civil Code, which enact that he has for the payment of his rent a privileged right upon the moveable effects which are found upon the property leased, and that he may seize them upon the premises or within eight days after they are taken away. The theory upon which this privilege is founded, is that the moveable effects placed by the tenant in the premises leased are pledged by him for the payment of the rent, and that being on the landlord's property they are constructively in his possession, although in the physical possession of the tenant. Baudry-Lacantinerie (vol. 3, p. 629), says: "En tant que le privilège porte sur les meubles garnissant la maison louée, il a pour cause une constitution tacite de gage. On peut facilement supposer, en effet, entre le bailleur et le preneur, l'existence d'une convention tacite, par suite de laquelle le mobilier mis par le preneur dans la maison louée, a été affecté à titre de gage au bailleur pour garantir le paiement des loyers." In the case of an ordinary pledge, the privilege subsists only so long as the thing pawned

remains in the hands of the creditor, and in the case of the tacit pledge which results from the lease of property, the privilege subsists as long as the moveable effects which are affected by it remain on the premises, or in the possession of the landlord; but in the latter case, by a special provision of law, to be found in Art. 1623 of the Civil Code, and in Art. 873 of the Code of Civil Procedure, the privilege is extended for eight days after the moveable effects have been removed. The landlord's privilege subsists as long as there has been no displacement of the moveable effects subject to it or no removal of them out of his possession, and for eight days after such displacement or removal, at the end of which delay it expires whether the things subject to it are in the tenant's possession or in the possession of a third party. Pothier, in his treatise on the Custom of Orleans, in No. 49 of the introduction to the title of Executions, says: "Après ce temps expiré l'hypothèque que le locateur avait sur les effets déplacés, s'évanouit, soit qu'ils soient en la possession de tiers, soit qu'ils soient encore en celle du locataire, son débiteur."

The condition necessary for the existence of the privilege and for its continuance beyond eight days, is possession by the landlord of the things affected by it as pledgee. Laurent, (Vol. 29, No. 383), says: "La possession est de l'essence du privilège attaché au gage; le créancier le perd dès qu'il cesse de posséder. Ce qui est vrai du gage conventionnel l'est aussi du gage tacite en vertu duquel le bailleur a un privilège." And in order to preserve his privilege a landlord has the right to prevent the removal of the things affected by it. Pothier, in his treatise on contract of lease, No. 252, says: "Le seigneur d'hôtel a comme en nantissement les meubles qui sont dans sa maison, d'où le locataire ne peut les faire sortir à son prejudice." There is no law to prevent an out-going tenant voluntarily leaving either all or some of his effects in the possession of his landlord to secure the payment of the amount which he may owe for rent; but in case he should attempt to remove his effects before paying all rent due, the landlord can only prevent him from doing so by means of